

In The
**United States Court Of Appeals
For The Fourth Circuit**

GILDAN USA INC.,

Plaintiff – Appellant,

v.

DILLARD’S INC.,

Defendant – Appellee.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
AT CHARLOTTE**

**JOINT APPENDIX
Volume I of II
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APPEAL,IAC

**U.S. District Court
Western District of North Carolina (Charlotte)
CIVIL DOCKET FOR CASE #: 3:14-cv-00590-MOC-DSC**

Gildan USA Inc. v. Dillard's, Inc.
Assigned to: District Judge Max O. Cogburn, Jr
Referred to: Magistrate Judge David S. Cayer
Case in other court: FCCA, 15--1401
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 10/22/2014
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

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Date Filed	#	Docket Text
10/22/2014	<u>1</u>	COMPLAINT against Dillard's Inc. with Jury Demand (Filing fee \$ 400 receipt number 0419-2461365), filed by Gildan USA Inc.. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Jones, Larry) Modified text on 10/22/2014 (jlk). Modified on 10/22/2014 to correct text (ssh). Modified text on 10/22/2014 (jlk). (Entered: 10/22/2014)
10/22/2014	<u>2</u>	Corporate Disclosure Statement by Gildan USA Inc. (Jones, Larry) Modified text on 10/22/2014 (jlk). (Entered: 10/22/2014)
10/22/2014	<u>3</u>	MOTION for Leave to Appear Pro Hac Vice as to Uly Samuel Gunn III Filing fee \$ 276, receipt number 0419-2461445. by Gildan USA Inc.. (Jones, Larry) Modified text on 10/22/2014 (jlk). (Entered: 10/22/2014)
10/22/2014	<u>4</u>	NOTICE of Appearance by Carla Hermida Clements on behalf of Gildan USA Inc. (Clements, Carla) (Entered: 10/22/2014)
10/23/2014		Case assigned to District Judge Max O. Cogburn, Jr and Magistrate Judge David S. Cayer. Notice: You must click this link to retrieve the <u>Case Assignment Packet</u> . Motions referred to David S. Cayer: <u>3</u> MOTION for Leave to Appear Pro Hac Vice as to Uly Samuel Gunn III Filing fee \$ 276, receipt number 0419-2461445. <i>This is your only notice - you will not receive a separate document.</i> (eef) (Entered: 10/23/2014)
10/23/2014	<u>5</u>	REPORT on the Filing of an action regarding patent and/or trademark numbers contained in complaint. (eef) (Entered: 10/23/2014)
10/23/2014	<u>6</u>	ORDER granting <u>3</u> Motion for Leave to Appear Pro Hac Vice added Uly Samuel Gunn, III for Gildan USA Inc.. Signed by Magistrate Judge David S. Cayer on 10/23/2014. (eef) (Entered: 10/23/2014)

10/23/2014		Notice to Uly Samuel Gunn, III: Pursuant to Local Rule 83.1 you are required to Register for ECF at www.ncwd.uscourts.gov . Deadline by 11/3/2014. (eef) (Entered: 10/23/2014)
10/29/2014	7	Summons Issued Electronically as to Dillard's, Inc.. NOTICE: Counsel shall print the summons and serve with other case opening documents in accordance with Fed.R.Civ.P.4 . (eef) (Entered: 10/29/2014)
11/05/2014	8	NOTICE of Appearance by W. Thad Adams, III on behalf of Dillard's, Inc. (Adams, W.) (Entered: 11/05/2014)
11/05/2014	9	NOTICE of Appearance by Samuel Alexander Long, Jr on behalf of Dillard's, Inc. (Long, Samuel) (Entered: 11/05/2014)
11/06/2014	10	SUMMONS Returned Executed by Gildan USA Inc.. Dillard's, Inc. served on 10/29/2014, answer due 11/19/2014. (Jones, Larry) (Entered: 11/06/2014)
11/19/2014	11	ANSWER to 1 Complaint, with Jury Demand by Dillard's, Inc..(Adams, W.) (Entered: 11/19/2014)
11/19/2014	12	Corporate Disclosure Statement by Dillard's, Inc. (Adams, W.) (Entered: 11/19/2014)
11/20/2014		NOTICE pursuant to Local Rule 16.1 you are required to conduct an Initial Attorney's Conference within 14 days. At the conference, the parties are required to discuss the issue of consent to jurisdiction of a magistrate judge in accordance with Local Rules 16.1(A) and 73.1(C). The Certificate of Initial Attorneys Conference should be filed within 7 days of the conference. If appropriate, a party may file a Motion to Stay the Initial Attorney's Conference. (chh) (Entered: 11/20/2014)
12/05/2014	13	CERTIFICATION of initial attorney conference and discovery plan (Adams, W.) (Entered: 12/05/2014)
12/05/2014	14	Joint MOTION for Protective Order by Dillard's, Inc.. Responses due by 12/22/2014 (Attachments: # 1 Proposed Order)(Adams, W.). Motions referred to David S. Cayer. (Entered: 12/05/2014)
12/10/2014	15	STIPULATED PROTECTIVE ORDER PURSUANT TO FED. R. CIV. P. 26(c). Signed by Magistrate Judge David S. Cayer on 12/10/2014. (eef) (Entered: 12/10/2014)
12/17/2014	16	MOTION for Preliminary Injunction by Gildan USA Inc.. Responses due by 1/5/2015 (Attachments: # 1 Memorandum in Support of Preliminary Injunction Motion, # 2 Index of Exhibits, # 3 Exhibit A - Declaration of Patricia McHale, # 4 Exhibit B - Declaration of Larry Jones, # 5 Proposed Order)(Gunn, Uly) (Entered: 12/17/2014)
12/17/2014	17	MOTION for Discovery (<i>Limited Accelerated Discovery</i>) by Gildan USA Inc.. Responses due by 1/5/2015 (Attachments: # 1 Proposed Order)(Gunn, Uly). Motions referred to David S. Cayer. (Entered: 12/17/2014)
12/22/2014	18	MOTION for Extension of Time to File Response/Reply re: 16 MOTION for Preliminary Injunction by Dillard's, Inc.. Responses due by 1/8/2015

		(Attachments: # 1 Proposed Order, # 2 Proposed Order Alternative Proposed Order.)(Adams, W.). Motions referred to David S. Cayer. (Entered: 12/22/2014)
01/02/2015	19	RESPONSE to Motion re 18 MOTION for Extension of Time to File Response/Reply re: 16 MOTION for Preliminary Injunction by Gildan USA Inc.. Replies due by 1/12/2015 (Attachments: # 1 Exhibit A)(Gunn, Uly) (Entered: 01/02/2015)
01/05/2015	20	Consent MOTION to Seal <i>Dillard's Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction and Exhibits 1-3</i> by Dillard's, Inc.. Responses due by 1/23/2015 (Attachments: # 1 Proposed Order)(Adams, W.). Motions referred to David S. Cayer. (Entered: 01/05/2015)
01/05/2015	21	MEMORANDUM in Support re 20 Consent MOTION to Seal <i>Dillard's Memorandum of Law in Opposition to Plaintiff's Motion for Preliminary Injunction and Exhibits 1-3</i> by Dillard's, Inc.. (Adams, W.) (Entered: 01/05/2015)
01/05/2015	22	SEALED RESPONSE (<i>Sealed - Attorney</i>) to Motion re: 16 Motion for Preliminary Injunction, 20 Motion to Seal, by Dillard's, Inc.; (available to Dillard's, Inc., Gildan USA Inc.) Replies due by 1/15/2015 (Attachments: # 1 Exhibit 1. Declaration of William Michael Shields, # 2 Exhibit 2. Declaration of Kelly McElyea, # 3 Exhibit 3. Dillard's Gold Label Designs)(Adams, W.) (Entered: 01/05/2015)
01/05/2015	23	Exhibit by Dillard's, Inc.. Exhibit to 22 Sealed Response to Motion, 4. <i>Collection of Third Party Uses</i> (Adams, W.) (Entered: 01/05/2015)
01/05/2015	24	Exhibit by Dillard's, Inc.. Exhibit to 22 Sealed Response to Motion, 5. <i>GOLDTOE and Design Registration</i> . (Adams, W.) (Entered: 01/05/2015)
01/05/2015	25	Exhibit by Dillard's, Inc.. Exhibit to 22 Sealed Response to Motion, 6. <i>Illustrated Comparison of Gildan's Trade Dress Definitions</i> (Adams, W.) (Entered: 01/05/2015)
01/05/2015	26	Exhibit by Dillard's, Inc.. Exhibit to 22 Sealed Response to Motion, 7. <i>Comparison of Gildan and Dillard's Packaging</i> . (Adams, W.) (Entered: 01/05/2015)
01/05/2015	27	Exhibit by Dillard's, Inc.. Exhibit to 22 Sealed Response to Motion, 8. <i>Goldtoe website pages</i> . (Adams, W.) (Entered: 01/05/2015)
01/06/2015		TEXT-ONLY ORDER granting 20 Motion to Seal. Entered by Magistrate Judge David S. Cayer on January 6, 2015. (DSC) (Entered: 01/06/2015)
01/06/2015	28	ORDER granting 17 Motion for Discovery; granting 18 Motion for Extension of Time to File Response/Reply re 16 MOTION for Preliminary Injunction (Responses due by 2/13/2015). Signed by District Judge Max O. Cogburn, Jr on 1/6/2015. (eef) (Entered: 01/06/2015)
01/30/2015	29	Sealed Document (<i>Sealed - Attorney</i>): Supplemental Memorandum in Support of Motion for Preliminary Injunction re: 16 MOTION for Preliminary Injunction by Gildan USA Inc.; (available to Dillard's, Inc., Gildan USA Inc.) (Attachments: # 1 Index of Exhibits, # 2 Exhibit A-1 - Deposition of William

		Michael Shields (Rough Draft Transcript) (Part 1), # 3 Exhibit A-2 - Deposition of William Michael Shields (Rough Draft Transcript) (Part 2), # 4 Exhibit A-3 - Deposition of William Michael Shields (Rough Draft Transcript) (Part 3), # 5 Exhibit B-1 Deposition of Joel Kelly McElyea (Rough Transcript) (Part 1), # 6 Exhibit B-2 Deposition of Joel Kelly McElyea (Rough Transcript) (Part 2), # 7 Exhibit B-3 Deposition of Joel Kelly McElyea (Rough Transcript) (Part 3)) (Gunn, Uly) (Entered: 01/30/2015)
01/30/2015	30	Exhibit by Gildan USA Inc.. Exhibit to 29 Sealed Document,,, <i>Exhibit C - Declaration of Sheldon Wolff</i> (Gunn, Uly) (Entered: 01/30/2015)
01/30/2015	31	Exhibit by Gildan USA Inc.. Exhibit to 29 Sealed Document,,, <i>Exhibit D - Declaration of Viraf Pudumjee</i> (Gunn, Uly) (Entered: 01/30/2015)
01/30/2015	32	Exhibit by Gildan USA Inc.. Exhibit to 29 Sealed Document,,, <i>Exhibit E - Supplemental Declaration of Patricia McHale</i> (Gunn, Uly) (Entered: 01/30/2015)
01/30/2015	33	Miscellaneous Filing by Gildan USA Inc.. re: 29 Sealed Document,,, <i>Proposed Preliminary Injunction Order</i> (Gunn, Uly) (Entered: 01/30/2015)
02/13/2015	34	ORDER re 16 MOTION for Preliminary Injunction . Signed by District Judge Max O. Cogburn, Jr on 2/13/2015. (eef) (Entered: 02/13/2015)
02/13/2015	35	SEALED RESPONSE (<i>Sealed - Attorney</i>) to Motion re: 16 Motion for Preliminary Injunction, by Defendant, Dillard's, Inc.; (available to Dillard's, Inc., Gildan USA Inc.) Replies due by 2/23/2015 (Attachments: # 1 Exhibit 1. Declaration of William Michael Shields., # 2 Exhibit 2. Declaration of Kelly McElyea., # 3 Exhibit 3. Dillard's Gold Label Designs.)(Adams, W.) (Entered: 02/13/2015)
02/13/2015	36	Attachment by Dillard's, Inc.. Attachment to 35 Sealed Response to Motion, <i>including Exhibit List with Unsealed Exhibits 4-19.</i> (Attachments: # 1 Exhibit 4. Collection of Third Party Uses., # 2 Exhibit 5. GOLDTOE and Design Registrationl., # 3 Exhibit 6. Illustrated Comparison of Gildan Trade Dress definitions., # 4 Exhibit 7. Comparison of Gildan and Dillard's packaging., # 5 Exhibit 8. All Gold Toe Sock Screen Shots from website., # 6 Exhibit 9. Dillard's Gold Label packages for other products., # 7 Exhibit 10. Gildan's Cease and Desist Letter., # 8 Exhibit 11. Dillard's Response to Cease and Desist Letter., # 9 Exhibit 12. Table of Gildan's Registrations., # 10 Exhibit 13. Gildan's Gold Toe Design Registration Nos. 308,608 and 2,056,422., # 11 Exhibit 14. Gold Toe and Gold Label comparison., # 12 Exhibit 15. Images of Gold Toe Socks., # 13 Exhibit 16. Gildan Press Release., # 14 Exhibit 17. Declaration of Cecilia M. Sidebottom., # 15 Exhibit 18. Gildan's Responses to Dillard's Requests for Production of Documents., # 16 Exhibit 19. Physical Exemplars submitted to Court.)(Adams, W.) (Entered: 02/13/2015)
02/16/2015	37	NOTICE by Gildan USA Inc. <i>Withdrawal of Counsel</i> (Clements, Carla) (Entered: 02/16/2015)
02/17/2015		NOTICE of Hearing on Motion re: 16 MOTION for Preliminary Injunction : Motion Hearing set for 3/11/2015 09:30 AM in Courtroom, 401 W Trade St,

		Charlotte, NC 28202 before District Judge Max O. Cogburn Jr. <i>This is your only notice - you will not receive a separate document.</i> (chh) (Entered: 02/17/2015)
03/11/2015		Minute Entry: MOTION HEARING held before District Judge Max O. Cogburn, Jr. Re 16 MOTION for Preliminary Injunction . Motion taken under advisement, order to issue. Plaintiffs attorney: Larry Jones, Uly Gunn. Defendants attorney: Samuel Long Jr., Thad Adams III. Court reporter: Jill Turner. (chh) (Entered: 03/11/2015)
03/19/2015	39	TRANSCRIPT of Motion for Preliminary Injunction held on 3/11/2015 before Judge Max O. Cogburn, Jr. NOTICE RE: REDACTION OF TRANSCRIPTS: The parties have 5 business days to file a Notice of Intent to Request Redaction and 21 calendar days to file a Redaction Request. If no notice is filed, this transcript will be made electronically available to the public without redaction after 90 calendar days. Transcript may be viewed at the court public terminal or purchased through the court reporter before the 90 day deadline. After that date it may be obtained through PACER. Policy at www.ncwd.uscourts.gov Release of Transcript Restriction set for 6/18/2015. (Reporter: Jill Turner, 704-350-7495) (Entered: 03/19/2015)
03/23/2015	40	ORDER denying 16 Motion for Preliminary Injunction. Signed by District Judge Max O. Cogburn, Jr on 3/20/2015. (tmg) (Entered: 03/23/2015)
03/30/2015	41	MOTION Entry of Discovery Plan by Dillard's, Inc.. Responses due by 4/16/2015 (Attachments: # 1 Exhibit 1. Proposed Discovery Plan)(Adams, W.) (Entered: 03/30/2015)
04/16/2015	42	NOTICE OF INTERLOCUTORY APPEAL as to 40 Order on Motion for Preliminary Injunction by Gildan USA Inc.. Filing fee \$ 505, receipt number 0419-2618836. <i>Use this link www.ca4.uscourts.gov to retrieve 4th Circuit case opening documents, i.e. Appearance of Counsel, Docketing Statement, Disclosure Statement, and Transcript Order Form.</i> Note: Your Transcript Order Form must be served on the District Court as well as the Circuit Court. (Gunn, Uly) (Entered: 04/16/2015)
04/16/2015	43	MOTION to Stay re 42 Notice of Interlocutory Appeal,, by Gildan USA Inc.. Responses due by 5/4/2015 (Attachments: # 1 Proposed Order)(Gunn, Uly). Motions referred to David S. Cayer. (Entered: 04/16/2015)
04/16/2015	44	Transmission of Notice of Appeal to US Court of Appeals re 42 Notice of Interlocutory Appeal,, (chh) (Entered: 04/16/2015)
04/16/2015	45	RESPONSE to Motion re 41 MOTION Entry of Discovery Plan by Gildan USA Inc.. Replies due by 4/27/2015 (Gunn, Uly) (Entered: 04/16/2015)
04/17/2015	46	USCA Case Number 15--1401 for 42 Notice of Interlocutory Appeal,, USCA Case Manager: S. Wiley. (chh) (Entered: 04/17/2015)
04/27/2015	47	RESPONSE in Opposition re 43 MOTION to Stay re 42 Notice of Interlocutory Appeal,, by Dillard's, Inc.. Replies due by 5/7/2015 (Adams, W.) (Entered: 04/27/2015)
04/29/2015	48	NOTICE by Gildan USA Inc. re: <i>FRAP 10(b)(1)(B) Certificate Regarding Transcript</i> (Gunn, Uly) (Entered: 04/29/2015)

PACER Service Center			
Transaction Receipt			
04/30/2015 15:21:14			
PACER Login:	tmstuckey:2830027:0	Client Code:	
Description:	Docket Report	Search Criteria:	3:14-cv-00590-MOC-DSC
Billable Pages:	5	Cost:	0.50

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-cv-00590

COMPLAINT AND JURY TRIAL DEMAND

Plaintiff Gildan USA Inc. ("Plaintiff" or "Gildan"), by and for its complaint against Dillard's, Inc. ("Defendant" or "Dillard's"), alleges as follows:

INTRODUCTION

1. This action arises out of Dillard's knowing and intentional copying of Gildan's packaging for its GOLDTOE men's athletic socks. Specifically, this is an action for: trade dress infringement, unfair competition, and false designation of origin in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); unfair competition in violation of North Carolina common law; and unfair and deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*

PARTIES

2. Gildan is a Delaware corporation with its principal place of business at 1980 Clements Ferry Road, Charleston, South Carolina 29492.

3. Dillard's is a Delaware corporation with its principal place of business at 1600 Cantrell Road, Little Rock, Arkansas 72201.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this case pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338 and 1367.

5. This Court has personal jurisdiction over Dillard's because it has committed tortious acts within this judicial district, has transacted business within this judicial district (including operating department stores selling the infringing merchandise within this judicial district), and has otherwise made or established contacts with this judicial district sufficient to permit the exercise of personal jurisdiction by this Court over it.

6. Venue is proper within this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events and injury giving rise to Gildan's claims is occurring within this judicial district, and because Dillard's is subject to personal jurisdiction within this judicial district.

GILDAN'S GOLDTOE TRADE DRESS

7. Gildan is a subsidiary of Gildan Activewear Inc. ("Gildan Activewear"), a leading manufacturer and marketer of branded apparel. In fiscal year 2013, Gildan Activewear had consolidated net sales totaling over 2.1 billion dollars. In the United States, Gildan is one of the largest suppliers of branded athletic, casual and dress socks to a broad spectrum of retailers.

8. Among Gildan's apparel products are socks marketed under the GOLDTOE trademark.

9. Gildan has adopted a distinctive packaging design (the "GOLDTOE Trade Dress") for its GOLDTOE men's athletic socks, which trade dress is comprised of: 1) a blue band with contrasting gold elements and white lettering for its word mark having two components, the first of which is the term "GOLD"; 2) a gold, partially-serrated rectangle on the

upper-right side of the front of the packaging informing consumers how many pairs of socks are included in the package; and 3) side panels which incorporate the color gold. The GOLDTOE Trade Dress is depicted in **Exhibit 1** attached hereto.

10. The GOLDTOE Trade Dress is inherently distinctive. Alternatively, and in any event, the GOLDTOE Trade Dress has acquired distinctiveness (which acquired distinctiveness is sometimes referred to as “secondary meaning”) as a branding device for Gildan’s GOLDTOE brand men’s athletic socks.

11. Upon information and belief, at the time Gildan adopted the GOLDTOE Trade Dress, no other sock manufacturer, marketer, or retailer sold socks in the United States in a package having the constituent elements of the GOLDTOE Trade Dress.

12. Gildan sells socks in the GOLDTOE Trade Dress packaging in numerous major retail stores throughout the United States, including Kohl’s, JC Penney, Belk, Dillard’s, Steinmart, and TJ Maxx, among others.

13. More than 91 million pairs of Gildan’s GOLDTOE men’s athletic socks in the GOLDTOE Trade Dress packaging have been purchased in the United States, generating over 260 million dollars in retail sales.

14. By virtue of its continuous and extensive use of the GOLDTOE Trade Dress in commerce since at least as early as March of 2011, Gildan owns common law rights in its GOLDTOE Trade Dress.

15. Through the extensive, continuous use and promotion of the GOLDTOE Trade Dress, Gildan has developed substantial goodwill in that trade dress, and the GOLDTOE Trade Dress is associated exclusively with the men’s athletic socks offered by Gildan under its GOLDTOE mark.

DILLARD'S INFRINGEMENT OF THE GOLDTOE TRADE DRESS

16. As noted above, Gildan's GOLDTOE men's athletic socks are sold in the GOLDTOE Trade Dress packaging in Dillard's department stores.

17. Dillard's also sells its own men's athletic socks under the trademark GOLD LABEL.

18. Recently, Dillard's began selling its GOLD LABEL socks in interstate commerce in packaging (the "Infringing GOLD LABEL Packaging") that copies all of the key elements of the GOLDTOE Trade Dress. Specifically, Dillard's GOLD LABEL socks are being sold in a package that features: 1) a blue band with contrasting gold elements and white lettering for its word mark having two components, the first of which is the term "GOLD"; 2) a gold, partially-serrated rectangle on the upper-right side of the front of the packaging informing consumers how many pairs of socks are included in the package; and 3) side panels which incorporate the color gold. The Infringing GOLD LABEL Packaging is depicted in **Exhibit 2** attached hereto.

19. Dillard's socks in the Infringing GOLD LABEL Packaging and Gildan's GOLDTOE men's athletic socks are marketed through the same channels of trade and to the same consumers.

20. Dillard's adoption of the Infringing GOLD LABEL Packaging for similar goods as Gildan is likely to cause consumers to be mistaken, confused or deceived into thinking that Dillard's socks originate from, or are associated or affiliated with or sponsored or endorsed by, Gildan and/or its GOLDTOE socks.

21. Additionally, and further exacerbating the likelihood of confusion arising from the imitative Infringing GOLD LABEL Packaging, Dillard's has displayed for sale both

GOLDTOE and GOLD LABEL men's athletic socks in retail displays that bear a sign with the GOLD LABEL mark at the top. (See images attached as **Exhibit 3**).

22. Gildan has not licensed or otherwise authorized Dillard's to use or mimic the GOLDTOE Trade Dress.

23. Dillard's recently has reduced its orders for Gildan's GOLDTOE socks. Having been a retailer of Gildan's GOLDTOE men's athletic socks, Dillard's is well aware of the GOLDTOE Trade Dress and, upon information and belief, Dillard's has intentionally copied the GOLDTOE Trade Dress in order to transition its customers away from the well-known GOLDTOE brand and to Dillard's GOLD LABEL socks.

FIRST CLAIM FOR RELIEF
(TRADE DRESS INFRINGEMENT, FALSE DESIGNATION OF ORIGIN AND UNFAIR COMPETITION UNDER 15 U.S.C. § 1125(a), *et seq.*)

24. Gildan repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 23 of this complaint.

25. The GOLDTOE Trade Dress is nonfunctional and inherently distinctive.

26. In addition, Gildan established secondary meaning in the GOLDTOE Trade Dress in connection with its men's athletic socks before Dillard's first use of the Infringing GOLD LABEL Packaging.

27. Dillard's use in commerce of a trade dress that is confusingly similar to the GOLDTOE Trade Dress in connection with Dillard's GOLD LABEL socks constitutes a use in interstate commerce that is likely to cause confusion, mistake or deception among consumers as to the source or origin of Dillard's GOLD LABEL socks, such that consumers may believe that Dillard's GOLD LABEL socks are sponsored by, endorsed by, approved by, licensed by, authorized by, or affiliated or connected with Gildan and/or its GOLDTOE men's athletic socks.

28. As such, Dillard's manufacture, distribution and sale of its GOLD LABEL socks in the Infringing GOLD LABEL Packaging violates 15 U.S.C. § 1125(a).

29. Upon information and belief, Dillard's has intentionally, knowingly and willfully adopted and used the Infringing GOLD LABEL Packaging.

30. As a result of these wrongful acts, Gildan is entitled to recover actual and treble damages, reasonable attorneys' fees, and the costs of this litigation pursuant to 15 U.S.C. § 1117.

31. In addition, Dillard's acts are causing and continue to cause Gildan harm in the nature of not only lost sales and revenue, but also irreparable harm by virtue of the loss of control over its reputation, the destruction of the distinctiveness of its packaging trade dress, and the loss of substantial consumer goodwill. This irreparable harm to Gildan will continue, without any adequate remedy at law, unless and until Dillard's unlawful conduct is enjoined by this Court.

SECOND CLAIM FOR RELIEF
(COMMON LAW UNFAIR COMPETITION)

32. Gildan repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 31 of this complaint.

33. Dillard's use of an imitation of the GOLDTOE Trade Dress in this state and elsewhere, without the authorization or consent of Gildan, in connection with Dillard's GOLD LABEL socks, is likely to cause confusion, mistake or deception among consumers as to the source, origin, sponsorship or affiliation of Dillard's GOLD LABEL socks and constitutes trade dress infringement, unfair competition, and misappropriation of Gildan's goodwill and reputation in violation of North Carolina common law.

34. Upon information and belief, Dillard's use of its Infringing GOLD LABEL Packaging is a bad faith attempt to trade off the goodwill of Gildan.

35. By virtue of the foregoing, Dillard's has caused Gildan to suffer injuries for which Gildan is entitled to recover substantial monetary remedies. In addition, Dillard's acts are causing and continue to cause Gildan harm in the nature of not only lost sales and revenue, but also irreparable harm by virtue of the loss of control over its reputation, the destruction of the distinctiveness of its packaging trade dress, and the loss of substantial consumer goodwill. This irreparable harm to Gildan will continue, without any adequate remedy at law, unless and until Dillard's unlawful conduct is enjoined by this Court.

THIRD CLAIM FOR RELIEF
(UNFAIR AND DECEPTIVE TRADE PRACTICES UNDER N.C. GEN. STAT. § 75-1.1)

36. Gildan repeats and incorporates by reference, as though specifically pleaded herein, the allegations of paragraphs 1 through 35 of this complaint.

37. There is invaluable goodwill in Gildan's GOLDTOE Trade Dress. Gildan has expended considerable time and money advertising and promoting the GOLDTOE brand in conjunction with the GOLDTOE Trade Dress.

38. Dillard's has actual knowledge of Gildan's rights in its GOLDTOE Trade Dress, as Gildan's GOLDTOE men's athletic socks are sold in Dillard's department stores. Upon information and belief, Dillard's intentionally copied the distinctive elements of the GOLDTOE Trade Dress for use in its Infringing GOLD LABEL Packaging for its men's athletic socks.

39. Upon information and belief, Dillard's has realized unjust profits, gains and advantages as a proximate result of its infringing conduct.

40. Dillard's use of its Infringing GOLD LABEL Packaging, which incorporates the elements of Gildan's GOLDTOE Trade Dress, is use in commerce that is likely to cause consumers to be confused, mistaken or deceived as to the affiliation, connection or association of

Dillard's with Gildan and/or its GOLDTOE men's athletic socks, or as to the origin, sponsorship or approval of Dillard's men's athletic socks by Gildan, in violation of N.C. Gen. Stat. § 75-1.1.

41. Dillard's unfair and deceptive activities have damaged Gildan and, unless enjoined, will continue to damage Gildan, including causing irreparable injury to Gildan for which Gildan has no adequate remedy at law.

42. Gildan is entitled to and seeks recovery from Dillard's of all damages caused by, and all profits earned unjustly by, Dillard's actions in violation of N.C. Gen. Stat. § 75-1.1, and to have such damages trebled pursuant to N.C. Gen. Stat. § 75-16.

43. Gildan is also entitled to and seeks recovery of its reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16.1.

PRAYER FOR RELIEF

WHEREFORE, Gildan demands a trial by jury on all issues so triable and judgment in its favor, and against Dillard's, for the following:

1. That Dillard's be adjudged to have infringed Dillard's GOLDTOE Trade Dress;
2. That Dillard's infringement and other wrongdoings be adjudged willful in nature;
3. That, pursuant to 15 U.S.C. § 1116(a), Dillard's, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with any of them, be preliminarily and permanently enjoined from directly or indirectly infringing or otherwise violating Gildan's GOLDTOE Trade Dress in this country by, among other things, the following:
 - a. Manufacturing, having manufactured, marketing, promoting, printing, using, selling, distributing, or otherwise disseminating, either directly or indirectly in this country, any goods, services, packaging materials, labels, advertisements or promotional materials of any sort in any medium of communication, or reproducing or causing others

to reproduce any such materials, incorporating the GOLDTOE Trade Dress (unless such products are provided by Gildan), including, without limitation, the Infringing GOLD LABEL Packaging; and

b. Using any false or misleading designations of origin or false or misleading descriptions or representations of fact in this country in connection with the manufacture, production, distribution, circulation, sale, offering for sale, advertising, promotion, or display of its products or services under the GOLDTOE Trade Dress, including, without limitation, use of the Infringing GOLD LABEL Trade Dress;

4. That Dillard's, its officers, agents, servants, employees, attorneys and those persons in active concert or participation with any of them, be directed to file with this Court and serve on Plaintiff within thirty (30) days after service of the injunction, a report in writing and under oath, setting forth in detail the manner and form in which Dillard's has complied with the injunction;

5. That, pursuant to 15 U.S.C. § 1118, Dillard's be ordered to destroy all advertisements, packaging and promotional materials or any other materials bearing the GOLDTOE Trade Dress;

6. Pre-judgment and post-judgment interest and costs by virtue of Dillard's infringement of the GOLDTOE Trade Dress;

7. An award of damages and/or profits to compensate Gildan for Dillard's infringement, pursuant to 15 U.S.C. § 1117;

8. An award of three times the amount of damages and/or Dillard's profits to compensate Gildan for Dillard's deliberate and willful acts of infringement;

9. An award of damages and/or Dillard's profits for unfair or deceptive trade practices under N.C. Gen. Stat. § 75-1.1 and that such damages and/or Dillard's profits be trebled in accordance with N.C. Gen. Stat. § 75-16;

10. That Dillard's be directed to pay Gildan's reasonable costs and attorneys' fees incurred in connection with this lawsuit, pursuant to 15 U.S.C. § 1117 and N.C. Gen. Stat. § 75-16.1; and

11. That Gildan be awarded such other and further relief as this Court may deem just and proper.

Respectfully submitted this 22nd day of October, 2014.

s/Larry C. Jones

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Counsel for Plaintiff Gildan USA Inc.

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

Defendant.

Case No. 3:14-cv-00590

DEFENDANT DILLARD'S, INC.'S ANSWER TO COMPLAINT

As and for its Answer to the Complaint against it by Gildan USA Inc. (“Gildan”), Dillard’s, Inc. (“Dillard’s”) Answers and says:

1. Dillard's admits that Gildan has asserted the specified claims against it, but denies that any of the asserted claims have any basis in law or fact.
2. Dillard's admits the allegations of Paragraph 2 of the Complaint upon information and belief.
3. Dillard's admits the allegations of Paragraph 3 of the Complaint.
4. Dillard's admits the allegations of Paragraph 4 of the Complaint.
5. Dillard's admits that it conducts business in this jurisdiction, and denies the remaining allegations of Paragraph 5 of the Complaint.
6. Dillard's admits that it is subject to personal jurisdiction in this Court, and denies the remaining allegations of Paragraph 6 of the Complaint.

7. Dillard's admits that Gildan is a marketer of branded apparel. Dillard's is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 7 of the Complaint, and therefore denies them.

8. Dillard's admits the allegations of Paragraph 8 of the Complaint.

9. Dillard's admits that Gildan has adopted and is using a label containing certain colors, color combinations and other materials, as recited. Dillard's denies that the Gold Toe label is distinctive or has any trade dress significance. Otherwise, Dillard's denies the allegations of Paragraph 9 of the Complaint.

10. Dillard's denies the allegations of Paragraph 10 of the Complaint.

11. Dillard's denies the allegations of Paragraph 11 of the Complaint.

12. Dillard's admits the allegations of Paragraph 12 of the Complaint upon information and belief.

13. Dillard's is without sufficient knowledge to admit or deny the remaining allegations of Paragraph 13 of the Complaint, and therefore denies them.

14. Dillard's denies the allegations of Paragraph 14 of the Complaint.

15. Dillard's denies the allegations of Paragraph 15 of the Complaint.

16. Dillard's admits that Gildan's men's socks are sold at Dillard's, and otherwise denies the allegations of Paragraph 16.

17. Dillard's admits the allegations of Paragraph 17.

18. Dillard's admits that it sells GOLD LABELTM brand hosiery in interstate commerce. The appearance of the GOLD LABELTM brand hosiery is a matter of public record. Otherwise, the allegations of Paragraph 18 of the Complaint are denied.

19. Dillard's admits that the GOLD LABEL[™] brand hosiery products and Gold Toe hosiery products travel in the same channels of trade. Otherwise, the allegations of Paragraph 19 of the Complaint are denied.

20. Dillard's denies the allegations of Paragraph 20 of the Complaint.

21. Dillard's admits the allegation relating to the GOLD LABEL[™] signage, and otherwise denies the allegations of Paragraph 21 of the Complaint.

22. Dillard's denies the allegations of Paragraph 22 of the Complaint, no license or other authorization from Gildan for Dillard's to carry out its lawful business activities being required.

23. Dillard's denies the allegations of Paragraph 23 of the Complaint.

24. Dillard's incorporates Paragraphs 1-23 of this Answer.

25. Dillard's denies the allegations of Paragraph 25 of the Complaint.

26. Dillard's denies the allegations of Paragraph 26 of the Complaint.

27. Dillard's denies the allegations of Paragraph 27 of the Complaint.

28. Dillard's denies the allegations of Paragraph 28 of the Complaint.

29. Dillard's denies the allegations of Paragraph 29 of the Complaint.

30. Dillard's denies the allegations of Paragraph 30 of the Complaint.

31. Dillard's denies the allegations of Paragraph 31 of the Complaint.

32. Dillard's incorporates Paragraphs 1-31 of this Answer.

33. Dillard's denies the allegations of Paragraph 33 of the Complaint.

34. Dillard's denies the allegations of Paragraph 34 of the Complaint.

35. Dillard's denies the allegations of Paragraph 35 of the Complaint.

36. Dillard's incorporates Paragraphs 1-35 of the Complaint.

- 37. Dillard's denies the allegations of Paragraph 37 of the Complaint.
- 38. Dillard's denies the allegations of Paragraph 38 of the Complaint.
- 39. Dillard's denies the allegations of Paragraph 39 of the Complaint.
- 40. Dillard's denies the allegations of Paragraph 40 of the Complaint.
- 41. Dillard's denies the allegations of Paragraph 41 of the Complaint.
- 42. Dillard's denies the allegations of Paragraph 42 of the Complaint.
- 43. Dillard's denies the allegations of Paragraph 43 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE
Lack of Inherent Distinctiveness

44. The trade dress asserted by Gildan is not inherently distinctive, but rather comprises only elements such as colors, common color combinations and admittedly functional elements that are incapable of being inherently distinctive, as a matter of law.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE
Lack of Acquired Distinctiveness

45. The trade dress asserted by Gildan has not acquired distinctiveness during its short period of use, but rather comprises only elements such as colors, common color combinations and admittedly functional elements that are incapable of acquiring distinctiveness, as a matter of law, even if such use was exclusive to Gildan.

46. However, the trade dress asserted by Gildan has not been used exclusively by Gildan to indicate Gildan as the sole origin of the hosiery products bearing the elements for which Gildan asserts trade dress protection. Rather, Gildan itself manufactures, sells and distributes hosiery products that are identical and very similar to the hosiery products labeled

according to the asserted trade dress with different labels bearing different colors, color combinations and admittedly functional elements that deprive Gildan of any claim of acquired distinctiveness.

47. In addition to Gildan's own use of different colors, color combinations and admittedly functional elements to label identical and similar hosiery products, numerous third party manufacturers, sellers and distributors of hosiery products presently use, and have used from a time prior to Gildan's adoption and use of the elements for which it claims trade dress, the same and similar colors, combinations of colors and functional material which deprive Gildan of any legal basis for claiming that its asserted trade dress is so distinctive that it serves to indicate the origin of the products labeled with the asserted trade dress as being solely from Gildan. Such colors and combinations of colors include the colors blue and gold.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE
Lack of Confusing Similarity

48. Without regard to whether Gildan's combination of colors and other elements comprise protectable trade dress, Dillard's prominently displays its own hosiery products with labels that include its own GOLD LABEL[™] and ROUNDTREE AND YORKE[®] trademarks together with different colors and color combinations, thus clearly and distinctly identifying to the consumer and others that the hosiery products originate from Dillard's, and only from Dillard's. Therefore, the accused Dillard's hosiery products and their manner of display and distribution are not likely to cause confusion, mistake or to deceive as to the affiliation, connection or association with Gildan, or as to the origin, sponsorship or approval of Dillard's or Gildan's hosiery products, services or commercial activities in accordance with Section 43(a) of the Trademark Act, 15 U.S.C. § 1125(a).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
Functionality of the Asserted Trade Dress

48. The asserted trade dress is functional within the meaning of Section 43(a)(3) of the Trademark Act, 15 U.S.C. § 1125(a)(3). Because in this civil action for trade dress infringement Gildan does not assert ownership of a registration on the principal register of the asserted trade dress, Gildan has the burden of proving that the matter sought to be protected is not functional. *Id.* Gildan cannot carry this burden because the matter sought to be protected is, as a matter of fact and of law, functional, and therefore not protectable.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
The State Claims are Preempted by and Duplicative of Federal Law

49. The Second and Third Claims for Relief asserted by Gildan are preempted by Federal Statute, in that the acts complained of comprise offenses covered by Federal Statute and do not rise to the level of violations of either the Common Law or of North Carolina's Unfair Competition Statute, §75-1.1, et seq. Any alleged violation of law by Dillard's was and is inadvertent and not in bad faith.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
No False Designation of Origin or Unfair Competition

50. The label used by Dillard's to display its hosiery products accurately and truthfully represents the origin of the hosiery products displayed and offered for sale by Dillard's. Further, the dominant appearance of the Gold Toe trademark on the Gildan products and the dominant appearance of Dillard's GOLD LABEL[™] and ROUNDTREE AND YORKE[®] trademarks by themselves and in combination with other product features clearly indicate the different origins of Gildan's and Dillard's products. To the extent that Gildan's and Dillard's

products are displayed in proximity to each other, the distinctively different overall appearance of the respective products is thereby more easily discerned by the consumer.

PRAYER FOR RELIEF

WHEREFORE, Dillard's prays the Court to:

- (1) dismiss the Complaint in its entirety with prejudice;
- (2) award Dillard's a reasonable attorneys fee based on the frivolous and baseless allegations contained in the Complaint;
- (3) award Dillard's all other costs incurred by it in defending this action;
- (4) enjoin Gildan from making further frivolous and baseless allegations of the type contained in the Complaint;
- (5) that all issues so triable be tried to a jury; and
- (6) such other and further relief as the Court may determine is just and proper.

This the 19th day of November, 2014.

Respectfully submitted,

s/ W. Thad Adams, III
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North Carolina Bar Number 000020
Attorney for Defendant
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OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2014, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

s/ W. Thad Adams, III

W. Thad Adams, III

North Carolina Bar Number 000020

Attorney for Defendant

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

PLAINTIFF GILDAN USA INC.'S MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed.R.Civ.P. 65 and 15 U.S.C. § 1116(a), and upon the accompanying memorandum of law and declarations submitted concurrently herewith, and all pleadings in this action and exhibits thereto, Plaintiff Gildan USA Inc., by its attorneys, Alston & Bird LLP, hereby moves this Court for an order preliminarily enjoining Defendant Dillard's, Inc. from its use of packaging that infringes Plaintiff's GOLDTOE Trade Dress. The specifics of the relief requested are detailed in the accompanying proposed preliminary injunction order.

Respectfully submitted this 17th day of December, 2014.

s/ Larry C. Jones

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Counsel for Plaintiff Gildan USA Inc.

CERTIFICATE OF COMPLIANCE WITH
LCvR 7.1(B)

I hereby certify that, in compliance with LCvR 7.1(B), I conferred with Plaintiff's attorney, Thad Adams, and attempted in good faith, but without success, to resolve the issue raised in this motion.

s/ Larry C. Jones

Larry C. Jones

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2014, I electronically filed the foregoing *Plaintiff Gildan USA Inc.'s Motion for Preliminary Injunction* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Uly S. Gunn
Uly S. Gunn

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

**DECLARATION OF PATRICIA MCHALE IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, PATRICIA MCHALE, hereby declare as follows:

1. My name is Patricia McHale. I am of legal age and under no legal disability. I have personal knowledge of the facts stated in this affidavit and know them to be true and correct.
2. I currently hold the position of Vice President Marketing of Gildan USA Inc. ("Gildan"). In that position, I am in charge of the marketing of the GOLDTOE brand of socks. I have been responsible for the marketing of GOLDTOE socks since 2000 when I began working for one of Gildan's predecessors-in-interest, Great American Knitting Mills, Inc., and I have been in charge of the marketing of GOLDTOE socks continuously since that time.
3. Gildan Activewear, Inc. ("Gildan Activewear") the parent company of Gildan, is a leading manufacturer and marketer of branded apparel.
4. In fiscal year 2013, Gildan Activewear had consolidated net sales that totaled over 2.1 billion dollars.
5. Gildan's GOLDTOE socks are among Gildan's most popular brands.

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6. Gildan and its predecessors-in-interest have manufactured and sold GOLDTOE or GOLD TOE brand socks since at least as early as 1934.

7. Today, GOLDTOE socks are sold through numerous retailers in the United States, including Macy's, Costco, Kohl's, JCPenney, Belk, Dillard's, Stein Mart, and T.J. Maxx.

8. Millions of dollars are spent annually by Gildan in advertising and promoting GOLDTOE brand socks in this country.

9. In 2010, Gildan decided to create a new, fresh and distinctive set of packaging for its GOLDTOE socks.

10. That packaging was introduced in March 2011, and since then GOLDTOE brand men's and women's socks have been marketed and sold in packaging having certain graphic features.

11. The distinctive packaging of GOLDTOE men's and women's socks is comprised of: 1) a colored band with contrasting white or gold lettering for its word mark having two components, the first of which is the term "GOLD"; 2) a rectangle of contrasting color in the upper-right portion of the front of the packaging; and 3) side panels which incorporate the color gold (hereinafter, the "GOLDTOE Trade Dress").

12. To Gildan's knowledge, prior to the recent commencement of Dillard's mimicry, no other brand of socks, including men's athletic socks (aka "sport socks") or other socks, in this country was sold in packaging incorporating the combination of elements comprising the GOLDTOE Trade Dress.

13. The GOLDTOE Trade Dress can be seen across the entire lines of men's and women's GOLDTOE socks.

14. A photograph depicting the retail packaging of GOLDTOE men's Heritage athletic socks is attached hereto as Exhibit A.

15. A photograph depicting the retail packaging of GOLDTOE men's Premier athletic socks is attached hereto as Exhibit B.

16. A photograph depicting the retail packaging of GOLDTOE men's Heritage dress/casual socks is attached hereto as Exhibit C.

17. A photograph depicting the retail packaging of GOLDTOE men's Premier dress/casual socks is attached hereto as Exhibit D.

18. A photograph depicting the retail packaging of GOLDTOE men's (regular) dress/casual socks is attached hereto as Exhibit E.

19. Photographs depicting the retail packaging of GOLDTOE women's Heritage dress/casual socks are attached hereto as Exhibits F and G.

20. A photograph depicting the retail packaging of GOLDTOE women's Premier dress/casual socks is attached hereto as Exhibit H.

21. Gildan also sells two other lines of men's and women's socks which include on their packages indications that those socks are from the producers of GOLDTOE brand socks. However, those lines of socks are branded more prominently as SIGNATURE GOLD brand and POWER-SOX brand socks, and, as such, their packaging does not incorporate the GOLDTOE Trade Dress.

22. As can be seen in Exhibit A, the GOLDTOE men's Heritage athletic socks incorporate the GOLDTOE Trade Dress by having packaging comprised of: 1) a blue colored band with contrasting white lettering for its word mark having two components, the first of which is the term "GOLD"; 2) a rectangle of contrasting color, gold or green, in the upper-right

portion of the front of the packaging; and 3) side panels which incorporate the color gold (hereinafter, the "GOLDTOE Men's Athletic Socks Trade Dress").

23. Gildan has enjoyed tremendous success in its sales of GOLDTOE brand socks in its distinctive GOLDTOE Trade Dress.

24. Gildan's current sales (wholesale) of GOLDTOE brand socks in the GOLDTOE Trade Dress in this country exceed \$150 million annually. That represents annual sales of nearly 100 million pairs of socks in the GOLDTOE Trade Dress.

25. Of that volume of sales, men's socks account for more than 2/3 of the sales, and, of that amount, men's athletic socks account for nearly 40% of the men's sock sales.

26. Men's athletic sock sales alone account for about 30% of the total sales of GOLDTOE brand socks sold in this country.

27. The annual U.S. sales of men's athletic socks in the GOLDTOE Trade Dress are about \$50 million dollars (wholesale) and about 30 million pairs.

28. Gildan's socks in the GOLDTOE Trade Dress enjoy a market share of more than 27% of the entire U.S. market for men's socks sold in department stores, ranking it No. 1 in sales among all brands in this country (ahead of such other well-known competitors as Calvin Klein, Polo, Hanes, adidas and Nike).

29. In the men's athletic socks subcategory, Gildan's socks in the GOLDTOE Men's Athletic Socks Trade Dress rank No. 2 in sales among all brands sold in department stores, trailing only Nike in that subcategory.

30. Gildan annually spends about \$5 million advertising and promoting its GOLDTOE brand socks, all of which socks are packaged in the GOLDTOE Trade Dress. This figure is exclusive of marketing discounts, allowances, and other considerations that are agreed

upon with Gildan's vendors and deducted from invoices. Of that amount, about \$3 million is advertising and promotion of its men's GOLDTOE socks.

31. Since 2011, Gildan has spent approximately \$18 million advertising and promoting the GOLDTOE brand, including the GOLDTOE Trade Dress.

32. Those expenses are incurred in such media as national print ads, digital advertising, out-of-home advertising (e.g., kiosks), radio and the GoldToe website, www.goldtoe.com.

33. Print ads promoting GOLDTOE brand socks regularly appear in such well-known and widely distributed publications as *GQ*, *Money*, *Men's Health*, *Golf Digest* and *Wired*.

34. As is customary in the industry, Gildan also underwrites significant expenses of some of its retailer customers through Gildan's cooperative advertising program. Annually, millions of consumers in this country receive newspaper inserts promoting GOLDTOE brand socks being sold in particular retail store chains, a substantial portion of the cost of which is paid by Gildan through its cooperative advertising program.

35. Other means of advertising and promoting the GOLDTOE brand socks include direct mail pieces, hundreds of thousands of which are sent to the purchasing public annually.

36. Gildan's GOLDTOE socks have been sold in Dillard's stores since prior to the March 2011 introduction of packaging featuring the GOLDTOE Trade Dress.

37. Gildan has observed that Dillard's has recently decreased its purchases of GOLDTOE socks.

38. In Gildan's view, it is apparent that this reduction in Dillard's purchases of GOLDTOE socks is part of Dillard's systematic effort to supplant sales of GOLDTOE socks with those of its own GOLD LABEL brand.

39. Coincident with Dillard's reduced purchases of GOLDTOE socks, Dillard's recently began selling its house-branded GOLD LABEL men's athletic socks in new packaging that incorporates the elements of the GOLDTOE Trade Dress.

40. Dillard's GOLD LABEL men's athletic socks are now being sold in a package that incorporates: 1) a blue colored band with contrasting white lettering for its word mark having two components, the first of which is the term "GOLD"; 2) a gold rectangle in the upper-right portion of the front of the packaging; and 3) side panels which incorporate the color gold.

41. Dillard's has also included a serrated bottom edge of the rectangle in the upper-right portion of the front of the packaging, just as Gildan uses such a serrated edge on the bottom of its corresponding rectangle in its GOLDTOE Men's Athletic Socks Trade Dress and in the packaging of most other sub-categories of its GOLDTOE brand socks.

42. Further, the blue color chosen by Dillard's for its men's athletic socks corresponds to the color blue used by Gildan in its packaging for its men's athletic socks, the GOLDTOE Men's Athletic Socks Trade Dress.

43. Gildan has in no way licensed or authorized Dillard's to mimic the GOLDTOE Trade Dress, of which trade dress Dillard's was well aware due to its long-standing status as a retailer of GOLDTOE socks, including GOLDTOE men's athletic socks.

44. In Gildan's view, in Dillard's effort to transition its customers away from GOLDTOE socks and toward Dillard's own GOLD LABEL socks, Dillard's intentionally copied the GOLDTOE Trade Dress.

45. Not only has Dillard's decided to use the GOLD LABEL designation on its house brand socks, but also it has taken such deceptively imitative steps as designating its

counterparts to the GOLDTOE "Canterbury" and "Metropolitan" socks as its "Canter" and "Metro" socks.

46. Further, since the back of the GOLDTOE band includes a white sock with gold features in the toe area, Dillard's has added gold coloring in the area of the toes of the white sock on the back of its infringing band.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 17th day of December, 2014


Patricia McHale

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2014, I electronically filed the foregoing *Declaration of Patricia McHale in Support of Motion for Preliminary Injunction* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Uly S. Gunn
Uly S. Gunn

Exhibit A



Case 3:14-cv-00590-MOC-DSC Document 16-3 Filed 12/17/14 Page 10 of 24

Exhibit B



Exhibit C



Case 3:14-cv-00590-MOC-DSC Document 16-3 Filed 12/17/14 Page 14 of 24

Exhibit D



Exhibit E



Case 3:14-cv-00590-MOC-DSC Document 16-3 Filed 12/17/14 Page 18 of 24

Exhibit F



Exhibit G



Exhibit H



**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

**DECLARATION OF LARRY C. JONES IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, LARRY C. JONES, hereby declare as follows:

1. My name is Larry C. Jones. I am of legal age and under no legal disability. I have personal knowledge of the facts stated in this affidavit and know them to be true and correct.
2. I am a Partner with the law firm Alston & Bird LLP in Charlotte, North Carolina. I am representing Plaintiff Gildan USA Inc. ("Gildan") in connection with the present litigation.
3. Attached hereto as Exhibit A is a true and correct copy of a portion of Defendant Dillard's, Inc.'s ("Dillard's") investor relations website at <https://investor.shareholder.com/dillards/>. According to this website and Dillard's marketing website, <http://www.dillards.com>, Dillard's operates a chain of department stores through much of the United States. Also according to those websites, Dillard's retail stores sell a variety of clothing items, in addition to an extensive array of other merchandise.
4. Dillard's 2013 annual report is accessible through the investor relations website referenced above. That report indicates, *inter alia*, that "Men's apparel and accessories"

accounted for only 17% of Dillard's annual revenue, of which men's athletic socks would be a much smaller percentage.

5. On September 6, 2014, I visited the Dillard's department store located at SouthPark Mall in Charlotte, North Carolina. On that day I photographed both Gildan's GOLDTOE men's athletic socks and Dillard's GOLD LABEL men's athletic socks being sold together in a single retail display bearing signage at the top that read GOLD LABEL. True and correct copies of a selection of these photographs are attached as Exhibit B.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 9th day of December, 2014


Larry C. Jones

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on December __, 2014, I electronically filed the foregoing *Declaration of Larry C. Jones in Support of Motion for Preliminary Injunction* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

/s/ Uly S. Gunn

Uly S. Gunn

Exhibit A

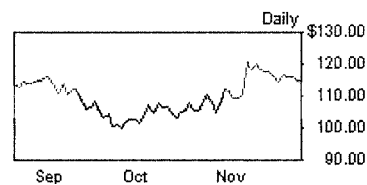
- [Sale & Clearance](#)
- [Shop By Brand](#)
- [My Account](#)
- [Dillard's Card](#)
- [Wish List](#)
- [Shopping Bag \(0 \) \\$ 0.00](#)



- [Women](#)
- [Juniors](#)
- [Shoes](#)
- [Handbags](#)
- [Accessories](#)
- [Lingerie](#)
- [Beauty](#)
- [Men](#)
- [Children](#)
- [Home](#)

Investor Overview

Dillard's, Inc. ranks among the nation's largest fashion apparel, cosmetics and home furnishings retailers with annual sales exceeding \$6.5 billion. The Company focuses on delivering maximum fashion and value to its shoppers by offering compelling selections complemented by exceptional customer care. Dillard's stores offer a broad selection of merchandise and feature products from both national and exclusive brand sources. The Company operates 278 Dillard's locations and 20 clearance centers spanning 29 states plus an Internet store at www.dillards.com.



Recent Releases

[View all »](#)

Nov 21, 2014

[Dillard's, Inc. Announces \\$0.06 Cash Dividend and New \\$500 Million Share Repurchase Program](#)

Nov 13, 2014

[Dillard's, Inc. Reports Third Quarter Earnings per Share of \\$1.30 versus \\$1.13](#)

- [Dillard's Gift Cards](#)
- [Wedding & Baby Registry](#)
- [Catalogs & Ads](#)
- [Store Locator & Events](#)
- [Apply for a Dillard's Card](#)

Customer Service

Call 1-800-DILLARD (800-345-5273)



**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark one)



**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended February 1, 2014

or



**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number 1-6140

DILLARD'S, INC.

(Exact name of registrant as specified in its charter)

DELAWARE
State or other jurisdiction
of incorporation or organization

71-0388071
(IRS Employer
Identification No.)

**1600 CANTRELL ROAD, LITTLE ROCK,
ARKANSAS**
(Address of principal executive offices)

72201
(Zip Code)

Registrant's telephone number, including area code **(501) 376-5200**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Class A Common Stock	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

☒ Yes ☐ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

☐ Yes ☒ No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☒ Yes ☐ No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company"

PART I**ITEM 1. BUSINESS.**

Dillard's, Inc. ("Dillard's", the "Company", "we", "us", "our" or "Registrant") ranks among the nation's largest fashion apparel, cosmetics and home furnishing retailers. The Company, originally founded in 1938 by William T. Dillard, was incorporated in Delaware in 1964. As of February 1, 2014, we operated 296 Dillard's stores, including 18 clearance centers, and an Internet store offering a wide selection of merchandise including fashion apparel for women, men and children, accessories, cosmetics, home furnishings and other consumer goods. The Company also operates a general contracting construction company, CDI Contractors, LLC and CDI Contractors, Inc. ("CDI"), a portion of whose business includes constructing and remodeling stores for the Company.

The following table summarizes the percentage of net sales by segment and major product line:

	Percentage of Net Sales		
	Fiscal 2013	Fiscal 2012	Fiscal 2011
Retail operations segment:			
Cosmetics	15%	15%	15%
Ladies' apparel	22	22	23
Ladies' accessories and lingerie	16	15	14
Juniors' and children's apparel	8	8	8
Men's apparel and accessories	17	17	17
Shoes	16	16	16
Home and furniture	5	5	6
	99	98	99
Construction segment	1	2	1
Total	100%	100%	100%

Additional information regarding our business, results of operations and financial condition, including information pertaining to our reporting segments, can be found in Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 hereof and in Note 2 of "Notes to Consolidated Financial Statements" in Item 8 hereof.

We operate retail department stores in 29 states, primarily in the southwest, southeast and midwest regions of the United States. Most of our stores are located in suburban shopping malls and open-air centers. Customers may also purchase our merchandise on-line at our website, www.dillards.com, which features on-line gift registries and a variety of other services.

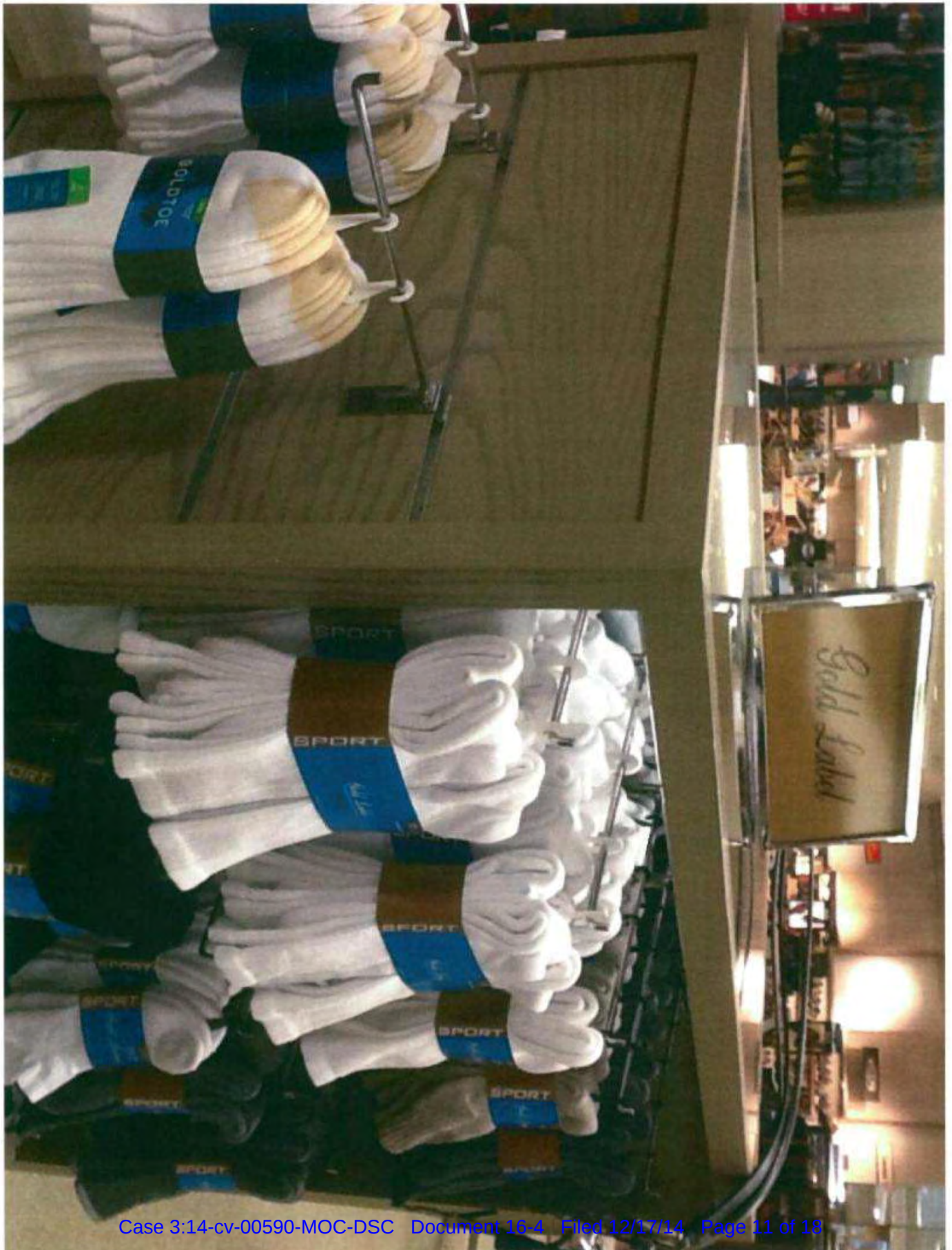
Our retail merchandise business is conducted under highly competitive conditions. Although we are a large regional department store, we have numerous competitors at the national and local level that compete with our individual stores, including specialty, off-price, discount and Internet retailers. Competition is characterized by many factors including location, reputation, merchandise assortment, advertising, price, quality, operating efficiency, service and credit availability. We believe that our stores are in a strong competitive position with regard to each of these factors. Other retailers may compete for customers on some or all of these factors, or on other factors, and may be perceived by some potential customers as being better aligned with their particular preferences.

Our merchandise selections include, but are not limited to, Dillard's lines of exclusive brand merchandise such as Antonio Melani, Gianni Bini, GB, Roundtree & Yorke and Daniel Cremieux. Dillard's exclusive brands/private label merchandise program provides benefits for Dillard's and our customers. Our customers receive fashionable, higher quality product often at a savings compared to national brands. Dillard's private label merchandise program allows us to ensure Dillard's high standards are achieved, while minimizing costs and differentiating our merchandise offerings from other retailers.

We have made a significant investment in our trademark and license portfolio, in terms of design function, advertising, quality control and quick response to market trends in a quality manufacturing environment. Dillard's trademark registrations are maintained for as long as Dillard's holds the exclusive right to use the trademarks on the listed products.

Exhibit B





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Exhibit C

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

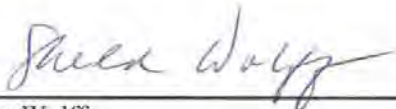
**DECLARATION OF SHELDON WOLFF IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, Sheldon Wolff, hereby declare as follows:

1. My name is Sheldon Wolff. I am of legal age and under no legal disability. I have personal knowledge of the facts stated in this affidavit and know them to be true and correct.
2. I currently hold the position of Vice President - Sales at Gildan USA Inc. ("Gildan"). I have been working with the GOLD TOE or GOLDTOE brand for over 40 years. As part of my position, I meet occasionally with representatives of Dillards, Inc.
3. Dillard's Vice President Michael McNiff has made statements on several occasions that he would like to find a way to replace Dillard's GOLDTOE socks business with another offering for Dillard's consumers.
4. Dillard's at one time designated its private label style comparables to the GOLDTOE "Canterbury" and "Metropolitan" ribbed dress socks as its "Canter-Rib" and "Metro-Rib" socks.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 27 day of January, 2015



Sheldon Wolff

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing *Declaration of Sheldon Wolff in Support of Motion for Preliminary Injunction* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

/s/ Uly S. Gunn

Uly S. Gunn

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

**DECLARATION OF VIRAF PUDUMJEE IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, Viraf Pudumjee, hereby declare as follows:

1. My name is Viraf Pudumjee. I am of legal age and under no legal disability. I have personal knowledge of the facts stated in this affidavit and know them to be true and correct.
2. I currently hold the position of Director of Sales National Accounts at Gildan USA Inc. ("Gildan"). I have been working with the GOLD TOE or GOLDTOE brand for over 20 years. As part of my position, I meet occasionally with representatives of Dillards, Inc.
3. Dillard's Vice President Michael McNiff has made statements on numerous occasions that he would like to find a way to replace Dillard's GOLDTOE socks business with another offering for Dillards consumers.
4. Dillard's at one time designated its private label styles comparables to the GOLDTOE "Canterbury" and "Metropolitan" ribbed dress socks as its "Canter-Rib" and "Metro-Rib" socks.

5. Dillard's Vice President Michael McNiff stated to me on one occasion that he hoped Dillard's customers confused Dillard's "Canter-Rib" and "Metro-Rib" socks for GOLDTOE's "Canterbury" and "Metropolitan" socks.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this 29th day of January, 2015



Viraf Pudumjee

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing *Declaration of Viraf Pudumjee in Support of Motion for Preliminary Injunction* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

/s/ Uly S. Gunn

Uly S. Gunn

Exhibit E

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

**SUPPLEMENTAL DECLARATION OF PATRICIA MCHALE IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, PATRICIA MCHALE, hereby declare as follows:

1. My name is Patricia McHale. I am of legal age and under no legal disability. I have personal knowledge of the facts stated in this affidavit and know them to be true and correct.

2. I currently hold the position of Vice President Marketing of Gildan USA Inc. ("Gildan"). In that position, I am in charge of the marketing of the GOLDTOE brand of socks. I have been responsible for the marketing of GOLDTOE socks since 2000 when I began working for one of Gildan's predecessors-in-interest, Great American Knitting Mills, Inc., and I have been in charge of the marketing of GOLDTOE socks continuously since that time.

3. Gildan did not discover the Infringing GOLD LABEL Packaging until September 1, 2014, when I observed the packaging at the Dillard's store at Northwoods Mall in North Charleston.

4. Within the month, after discussions with counsel, Gildan sent a cease and desist letter to Dillard's.

LEGAL02/35245683v1

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5. Though Gildan had hoped for an amicable resolution, when the response from Dillard's outside counsel indicated clear disagreement with Gildan's position, Gildan proceeded with filing its complaint within approximately three weeks of receiving that response.

6. After filing its complaint, Gildan was hopeful that Dillard's would reconsider its position and that a motion for preliminary injunction would not be necessary.

7. When Dillard's filed an answer indicating its intent to vigorously defend Gildan's claims, Gildan then proceeded with preparing and filing a motion for preliminary injunction.

8. Though the motion for preliminary injunction was filed on December 17, 2014, the date of the filing was not intended to coincide with the holiday season or cause Dillard's and its counsel to respond to the motion over the holiday.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

DATED this th28 day of January, 2015


Patricia McHale

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing
Supplemental Declaration of Patricia McHale in Support of Motion for Preliminary Injunction
with the Clerk of Court using the CM/ECF system, which will automatically send e-mail
notification of such filing to all attorneys of record.

/s/ Uly S. Gunn
Uly S. Gunn

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:14-cv-00590-MOC-DSC

GILDAN USA INC.,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
DILLARD'S, INC.,)	
)	
Defendant.)	

THIS MATTER is before the court on plaintiff's Motion for Preliminary Injunction (#16). While it is never safe to say that a matter has been fully briefed in an intellectual property case, it appears to the court that the briefing allowed by the Local Civil Rules is complete. Oral arguments will, therefore, be scheduled for hearing.

In advance of such hearing, the court believes that it is advisable to inform the parties that the court has conducted a preliminary review of the extensive briefs and exhibits and has some initial thoughts based on that review. Knowing that there is substantial cost in packaging and that substantial lead times are needed to change over product on the retail floor, the parties are advised that a preliminary balance-of-hardships test suggests that a preliminary injunction may well issue. Section 43(a) of the Lanham Act prohibits unauthorized use of another's trade dress if such use is likely to confuse or deceive the public. Trade dress is protectable under the *Lanham Act* when it is distinctive and nonfunctional and where a plaintiff ultimately shows a likelihood of confusion. While all of the factors (and the sub-factors that inform such decision) will be considered in detail -- and the court may well be swayed in the other direction at oral arguments -

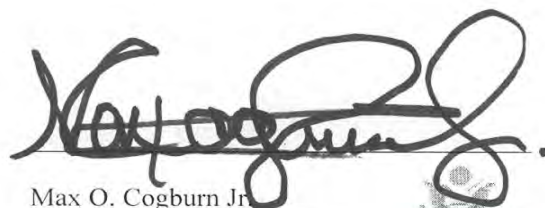
- it appears likely that plaintiff will be able to show a likelihood that it will prevail at trial based on the similarity of defendants' trade dress. Indeed, the exhibits the court has reviewed indicate that the packaging would not just confuse the public, but would likely confuse *the court* as to which product is a genuine GOLDTOE sock and what is a Dillard's house-brand GOLD LABEL sock. Put another way, if a customer were to walk into Dillard's to buy a pair of GOLDTOE socks, it is very likely that if the customer saw the GOLD LABEL house brand first, the customer would pick up and purchase those socks. While Dillard's would certainly have that sale and a larger profit, it would likely lose that customer's business or at least some goodwill once it was discovered that the product was not a genuine GOLDTOE sock, as no one appreciates being duped.

Such discussion is not intended to be binding on the courts or the parties, but may be grist for discussions between the parties leading up to the hearing. As the court further gears up for this hearing, the parties are encouraged to communicate any amicable resolution to the court well in advance of the hearing date so that resources may be directed to other matters.

ORDER

IT IS, THEREFORE, ORDERED that the Clerk of Court notice plaintiff's Motion for Preliminary Injunction (#16) for **ORAL ARGUMENTS** during the March 2015 hearings calendar.

Signed: February 13, 2015



Max O. Cogburn Jr.
United States District Judge

**INDEX OF EXHIBITS TO DILLARD'S
MEMORANDUM OF LAW IN OPPOSITION TO
GILDAN'S MOTION FOR PRELIMINARY INJUNCTION**

The following are submitted electronically to the above-referenced Opposition Memorandum filed on February 13, 2015 (exhibits with an asterisk were submitted under seal):

Exhibit 1* – Declaration of William Michael Shields.

Exhibit 2* – Declaration of Kelly McElyea.

Exhibit 3* – Dillard's Gold Label Designs – iterations.

Exhibit 4 – Collection of Third Party Uses.

Exhibit 5 – GOLDTOE and Design Registration.

Exhibit 6 – Illustrated Comparison of Gildan Trade Dress definitions.

Exhibit 7 – Comparison of Gildan and Dillard's packaging.

Exhibit 8 – All Gold Toe Sock Screen Shots from website.

Exhibit 9 – Dillard's Gold Label packages for other products (DIL 000027 – DIL 000029).

Exhibit 10 – Gildan's Cease and Desist Letter (GT00029 – GT00036).

Exhibit 11 – Dillard's Response to Cease and Desist Letter (GT00026 – GT00028).

Exhibit 12 – Table of Gildan's Registrations.

Exhibit 13 – Gildan's Gold Toe Design Registration Nos. 308,608 and 2,056,422.

Exhibit 14 – Gold Toe and Gold Label comparison (GT00009 and GT00015).

Exhibit 15 – Images of Gold Toe Socks (GT00021; GT00296; GT00779; GT00066).

Exhibit 16 – Gildan Press Release (GT00102 – GT00106).

Exhibit 17 – Declaration of Cecilia M. Sidebottom.

Exhibit 18 – Gildan's Responses to Dillard's Requests for Production of Documents.

Exhibit 19 – Physical Exemplars submitted to Court.

EXHIBIT 4







































































































EXHIBIT 5

1/5/2015

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[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

GOLDTOE

Word Mark	GOLDTOE
Goods and Services	IC 025, US 022 039, G & S: Clothing, namely, T-shirts and underwear; footwear, namely, socks. FIRST USE: 20120800. FIRST USE IN COMMERCE: 20120800
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	09.01.02 - Embroidery; Labels, clothing; Stitching, not on clothing pockets 26.01.06 - Circles, semi; Semi-circles
Serial Number	86057773
Filing Date	September 6, 2013
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	March 25, 2014
Registration Number	4546796
Registration Date	June 10, 2014
Owner	(REGISTRANT) GILDAN USA INC. CORPORATION DELAWARE 1980 CLEMENTS FERRY ROAD CHARLESTON SOUTH CAROLINA 29492
Assignment Recorded	ASSIGNMENT RECORDED
Attorney of Record	Martha Gayle Barber

1/5/2015

Trademark Electronic Search System (TESS)

Prior Registrations 0770389;3998826

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the word "GOLDTOE" in a stylized upper-case format, with a semicircle comprised of six lines of a stitches pattern beneath the letters "T", "O", "E".

Type of Mark TRADEMARK

Register PRINCIPAL-2(F)-IN PART

Live/Dead Indicator LIVE

Distinctiveness Limitation as to "GOLDTOE"

Statement

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
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EXHIBIT 6

Table 1: Gildan's Definitions of its claimed "GOLDTOE Trade Dress"

Gildan's COMPLAINT Definition "GOLDTOE Trade Dress" for its GOLDTOE men's athletic socks	Gildan's PRELIMINARY INJUNCTION Definition "GOLDTOE Trade Dress" (emphasis added)* [for its] men's and women's [athletic] socks
a blue band	a blue colored band
with contrasting gold elements	[elements not claimed]
white lettering for its word mark	<u>contrasting white or gold</u> lettering for its word mark
word mark having two components, the first of which is the term "GOLD"	word mark having two components, the first of which is the term "GOLD"
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging	a gold, partially-serrated rectangle of <u>contrasting color</u> in the upper-right portion of the front of the packaging
[rectangle functions by] informing consumers how many pairs of socks are included in the package	[functional description, i.e., "informing consumers," is not claimed]
side panels which incorporate the color gold	side panels which incorporate the color gold

* Underlining represents additions to Gildan's definition of "GOLDTOE Trade Dress" as defined in the Preliminary Injunction Memo (Doc. 16-1) relative to Gildan's definition of "GOLDTOE Trade Dress" as defined in the Complaint (Doc. 1). Likewise, bracketed strikeouts represent deletions to Gildan's definition of "GOLDTOE Trade Dress" as defined in the Preliminary Injunction Memo (Doc. 16-1) relative to Gildan's definition of "GOLDTOE Trade Dress" as defined in the Complaint (Doc. 1).

Table 2A: Gildan's Packaging Compared to Trade Dress Defined in Complaint

Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit A Example 1	Doc. 16-3 Exhibit A Example 2							
			yes	yes	yes	yes	<u>NO</u>	<u>NO</u>	yes
a blue band			yes						
with contrasting gold elements			yes						
white lettering for its word mark			yes						
word mark having two components, the first of which is the term "GOLD"			yes						
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging			yes						
[rectangle functions by] informing consumers how many pairs of socks are included in the package			yes						
side panels which incorporate the color gold			<u>NO</u>						

Table 2B: Gildan's Packaging Compared to Trade Dress Defined in Complaint



Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit B Example 1	Doc. 16-3 Exhibit B Example 2						
		NO	yes	NO	yes	NO	yes	NO
a blue band		<u>NO</u>						
with contrasting gold elements		yes						
white lettering for its word mark		<u>NO</u>						
word mark having two components, the first of which is the term "GOLD"		yes						
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging		yes						
[rectangle functions by] informing consumers how many pairs of socks are included in the package		yes						
side panels which incorporate the color gold		yes						

Table 2C: Gildan's Packaging Compared to Trade Dress Defined in Complaint


Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit C Example 1		Doc. 16-3 Exhibit C Example 2		Doc. 16-3 Exhibit C Example 3	
						
	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>	<u>NO</u>
	yes	yes	yes	yes	yes	yes
	yes	yes	yes	yes	yes	yes
a blue band						
with contrasting gold elements						
white lettering for its word mark						
word mark having two components, the first of which is the term "GOLD"						
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging						
[rectangle functions by] informing consumers how many pairs of socks are included in the package						
side panels which incorporate the color gold						

Table 2D: Gildan's Packaging Compared to Trade Dress Defined in Complaint




Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit D Example 1		Doc. 16-3 Exhibit D Example 2		Doc. 16-3 Exhibit D Example 3	
		<u>NO</u>		<u>NO</u>		<u>NO</u>
a blue band	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
with contrasting gold elements	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
white lettering for its word mark	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
word mark having two components, the first of which is the term "GOLD"	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
[rectangle functions by] informing consumers how many pairs of socks are included in the package	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>
side panels which incorporate the color gold	yes	<u>NO</u>	yes	<u>NO</u>	yes	<u>NO</u>

Table 2E: Gildan's Packaging Compared to Trade Dress Defined in Complaint








Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit E Example 1				Doc. 16-3 Exhibit E Example 2				Doc. 16-3 Exhibit E Example 3			
	<u>NO</u>				<u>NO</u>				<u>NO</u>			
	yes				yes				yes			
	yes				yes				yes			
	yes				yes				yes			
a blue band	<u>NO</u>											
with contrasting gold elements	yes											
white lettering for its word mark	yes											
word mark having two components, the first of which is the term "GOLD"	yes											
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging	<u>NO</u>											
[rectangle functions by] informing consumers how many pairs of socks are included in the package	<u>NO</u>											
side panels which incorporate the color gold	yes											

Table 2F: Gildan's Packaging Compared to Trade Dress Defined in Complaint

Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit F Example 1		Doc. 16-3 Exhibit F Example 2		Doc. 16-3 Exhibit F Example 3	
	<u>NO</u>		<u>NO</u>		<u>NO</u>	
a blue band						
with contrasting gold elements	yes		yes		yes	
white lettering for its word mark	yes		yes		yes	
word mark having two components, the first of which is the term "GOLD"	yes		yes		yes	
a gold, partially-serrated rectangle on the upper- right side of the front of the packaging	yes		yes		yes	
[rectangle functions by] informing consumers how many pairs of socks are included in the package	yes		yes		yes	
side panels which incorporate the color gold	yes		yes		yes	



Table 2G: Gildan's Packaging Compared to Trade Dress Defined in Complaint

Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit G Example 1		Doc. 16-3 Exhibit G Example 2		Doc. 16-3 Exhibit G Example 3	
	<u>NO</u>		<u>NO</u>		<u>NO</u>	
a blue band						
with contrasting gold elements	yes		yes		yes	
white lettering for its word mark	yes		yes		yes	
word mark having two components, the first of which is the term "GOLD"	yes		yes		yes	
a gold, partially-serrated rectangle on the upper- right side of the front of the packaging	yes		yes		yes	
[rectangle functions by] informing consumers how many pairs of socks are included in the package	yes		yes		yes	
side panels which incorporate the color gold	yes		yes		yes	



Table 2F: Gildan's Packaging Compared to Trade Dress Defined in Complaint




Gildan's COMPLAINT Definition "GOLDTOE Trade Dress"	Doc. 16-3 Exhibit F Example 1		Doc. 16-3 Exhibit F Example 2		Doc. 16-3 Exhibit F Example 3	
		<u>NO</u>		<u>NO</u>		<u>NO</u>
a blue band	<u>NO</u>		<u>NO</u>		<u>NO</u>	
with contrasting gold elements	yes		yes		yes	
white lettering for its word mark	<u>NO</u>		<u>NO</u>		<u>NO</u>	
word mark having two components, the first of which is the term "GOLD"	yes		yes		yes	
a gold, partially-serrated rectangle on the upper-right side of the front of the packaging	yes		yes		yes	
[rectangle functions by] informing consumers how many pairs of socks are included in the package	<u>NO</u>		<u>NO</u>		<u>NO</u>	
side panels which incorporate the color gold	yes		yes		yes	

EXHIBIT 7

Table 3: Elemental Comparison of Gildan Packaging and Dillard's "Accused" Packaging



<u>Gildan Packaging Element</u>	<u>Present in Dillard's?</u>	<u>Present in Gildan?</u>	<u>Dillard's Packaging Element</u>
Athlete in Background	NO	NO	Bottom Informational Panel
Water/Sky Blue Band	NO	NO	Solid Light Blue Band
Top Product Informational Panel	YES	YES	Top Product Informational Panel
GOLDTOE + Design Registered Trademark	NO	NO	GOLD LABEL/ROUNDTREE & YORKE Registered Trademark
Triangular Side Product Informational Panel	NO	NO	Rectangular Transverse Side Product Informational Panel
Gold Faux Stitch Imagery	NO	NO	Secondary Product Informational Panel
Made in Honduras	NO	NO	Made in USA

EXHIBIT 8

1/2/2015

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Ultra Tec Qtr 3 Pr

★★★★★

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Ultra Tec Quarter Extended 3 Pair

★★★★★

SHOP

Cushion Tec® Crew 3 Pr

★★★★★

SHOP

ADC Cushion Tec® Qtr

3 Pack ~~\$16.00~~ \$12.00

SHOP

Cocona Lo-Cut Sport 3 Pair

3 Pack ~~\$18.00~~ \$13.50

★★★★★

SHOP

Ultratec Short Crew 3 Pr

3 Pack ~~\$16.00~~ \$12.00

★★★★★

SHOP

Cushion Tec® Crew

3 Pack ~~\$16.00~~ \$12.00

★★★★★

SHOP

Ultra Tec Extended OTC

3 Pack ~~\$18.00~~ \$13.50

★★★★★

SHOP

Cushion Liner 4 Pack

4 Pack ~~\$16.00~~ \$12.00

SHOP

SoleUtion Sport Ultra Tec® Liner

3 Pack ~~\$20.00~~ \$12.00

SHOP

Ultra Tec Over the Calf

3 Pack ~~\$17.00~~ \$12.75

★★★★★

SHOP

Cushion Tec® Quarter

3 Pack ~~\$16.00~~ \$12.00

★★★★★

SHOP

Cushioned Cotton 4 Pack

4 Pack ~~\$16.00~~ \$12.00

★★★★★

SHOP

6 Pr Cotton Sport Liner

6 Pack ~~\$20.00~~ \$15.00

★★★★★

SHOP

6 Pr Cotton No Show

6 Pack ~~\$20.00~~ \$15.00

SHOP

6 Pr Cotton Crew

6 Pack ~~\$20.00~~ \$15.00

★★★★★

SHOP

Ultra Tec Over the Calf

3 Pack ~~\$17.00~~ \$12.75

★★★★★

SHOP

Ultra Tec Extended OTC

3 Pack ~~\$18.00~~ \$13.50

★★★★★

SHOP

6 Pr Cotton Crew

6 Pack ~~\$20.00~~ \$15.00

★★★★★

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 Cushion Quarter 3 Pack 3 Pack \$12.00 \$9.00 SHOP COMPARE <input type="checkbox"/>	 6 Pr Cotton Quarter Sock 6 Pack \$20.00 \$15.00 SHOP COMPARE <input type="checkbox"/>	 AquaFX® Soleution Crew 3 Pack \$17.00 \$12.75 SHOP COMPARE <input type="checkbox"/>	 AquaFX® Soleution Tab Liner 3 Pack \$17.00 \$12.75 SHOP COMPARE <input type="checkbox"/>
 AquaFX® Soleution Quarter 3 Pack \$17.00 \$12.75 SHOP COMPARE <input type="checkbox"/>	 UltraTec Crew Extended 3 Pack \$18.00 \$13.50 SHOP COMPARE <input type="checkbox"/>	 6 Pr Cotton Crew Extended 6 Pack \$21.00 \$15.75 SHOP COMPARE <input type="checkbox"/>	

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BEST SELLERS

- 
Ultra Tec Over the Calf
3 Pack
~~\$17.00~~
\$12.75
★★★★☆
SHOP
- 
Ultra Tec Extended OTC
3 Pack
~~\$18.00~~
\$13.50
★★★★☆
SHOP
- 
6 Pr Cotton Crew
6 Pack
~~\$20.00~~
\$15.00
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ULTRA TEC QTR 3 PR

Men's Socks

Style #: 2396P
 Price: ~~\$16.00~~
 Your Price: **\$12.00**
 (You save \$4.00)
 SKU: 711-2396P
 Pack: 3 Pair

Product Description

- Freshtex antimicrobial
- Hydrotec moisture control
- Soft combed cotton
- Reinforced very far &

Rating: ★★★★★ (5 product reviews)

Contents:
 78% Cotton, 13% Stretch Nylon, 8% Polyester, 1% Spandex
 Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$16.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$17.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

WRITE A REVIEW

Product Reviews

1. Shrinkage and color ★★★★★
 Posted by Unknown on 3rd Apr 2014

They do shrink somewhat, but maybe that can't be avoided. Pleeeeee make the gray ones again!!

2. I Also Want Grey Socks ★★★★★
 Posted by K Rowe on 19th Feb 2014

I have worn gold toe socks for years. My last purchase I bought some grey ones and I loved them. I'm sorry to hear that you have stopped making them. Please bring them back. Also, I agree with the comment that the white socks shrink to the point that they are tight on my toes. I wear a 10.5 shoe so I shouldn't have a tightness problem.

I rated you at 4 stars because the white socks shrink and you don't sell grey socks.

3. More than color ★★★★★
 Posted by paul on 25th Sep 2013

I agree with your need to bring back the gray (gray heather actually) but for a slightly less cosmetic reason. The gray have 72% cotton and 14% Hydrotec polyester vs 78% cotton and 8% hydrotec polyester that the white have. I have neuropathy of feet from Chemo and these gray are the only ones that don't shrink down on my feet and cause me pain!! They also stay softer longer and are more durable! PLEASE bring them back

4. Completely agree with "Wish you still made them in grey!" ★★★★★
 Posted by Unknown on 27th Aug 2013

Couldn't have said it better.....

5. Wish you still made them in grey! ★★★★★
 Posted by Larry Molsather on 12th Aug 2013

Dear "Gold Toe:" I've purchased approximately 60 grey pairs of your athletic quarter- socks over the past 10 years, along with about 30 pairs of your full-length black socks. I think I've been a very loyal customer. But, I'm now disappointed that you stopped making or selling your athletic quarter-socks in grey.

It's a matter of taste I realize; but, the white socks are "right out of the nursing-home." Go to any nursing home and look around. Every 80-year old guy and half the women are wearing white socks and sneakers. And, athletic quarter-socks in black would look really odd with a pair of sneakers. Just my opinion, I realize! But, overall, I've pretty much only worn "Gold Toe" socks for the past 30-years. Other manufacturers (including Adidas) make "quarter-socks or tube socks," but, they are typically all multi-colored and full of "Spandex," making them look like something for a person in "junior-high or high school," plus the total spandex makes them very uncomfortable for me.

I understand you may have some good business reasons for stopping making your quarter-socks grey. But, I think you may be losing a market segment in older customers. Just my humble opinion! I've always been very happy with your products up to now and over the past 30-years! Please bring back the "grey" if you can! Thanks for listening!

PS if you have any inventory of the former grey version, is there a way I could purchase some?

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CUSHION TEC® CREW 3 PR

Men's Socks

Style #: 2193S
 Price: ~~\$16.00~~
 Your Price: **\$12.00**
 (You save \$4.00)
 SKU: 711-2193S
 Pack: 3 Pair

Product Description

- Features moisture-wicking high bulk acrylic
- Antimicrobial protection to keep feet fresh
- Reinforced heel and toe for longer wear
- Spandex ensures a perfect fit
- Clincher foot provides arch support

Rating: ★★★★★ (3 product reviews)

Contents:
 84% Acrylic, 15% Nylon, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$6.00~~ **\$6.00**

★★★★★

SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$16.00~~ **\$12.00**

★★★★★

SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$17.00~~ **\$12.75**

★★★★★

SHOP

Reviews | Size Chart

Product Reviews

WRITE A REVIEW

1. One size doesn't work ★★★★★
 Posted by Frank M on 8th Mar 2014

I wear a size 9 boot and the 10-13 ends up wadedup on the bottom of my foot after several hours. What happened to the 9-11 size at fit very well

2. Best socks ever ★★★★★
 Posted by John A on 22nd Sep 2012

I purchased 21 pairs of the black poly spun gold toe socks over 5 years ago. I wear them every day for work and believe it or not have never worn a hole thru them. The cushioned sole has only worn at the heel, but not thru on some of the socks. Gold toe does not make them anymore. I just purchased (several weeks ago) 12 pair of these socks and couldn't be happier. The fit and comfort are excellent, and I expect I'll get years of use from these as well.

3. 2193s cushion tec w white ★★★★★
 Posted by Unknown on 21st Nov 2011

Good sock but are a little tight for size 12-13 foot, should be offered in extended sizes. Have you looked at the size of men growing in this country?

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ADC CUSHION TEC® QTR

Men's Socks

Style #: 2025P
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2025P
Pack: 3 Pair

Product Description

- Soft combed cotton
- Zoned cushioning
- Secure fit arch support
- Y heel for fit
- Reinforced Toe

Contents:
70% Cotton, 16% Stretch Nylon, 13% Polyester, 1% Spandex
Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1
English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★☆ SHOP

2
Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★☆ SHOP

3
Ultra Tec Over the Calf
3 Pack
~~\$17.00~~ **\$12.75**
★★★★☆ SHOP

Reviews Size Chart

Product Reviews

This product hasn't received any reviews yet. Be the first to review this product!

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Cocona Lo-Cut Sport 3 Pair - GoldToe.com

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COCONA LO-CUT SPORT 3 PAIR

Men's Socks

Style #: 3010P
Price: ~~\$10.00~~
Your Price: **\$13.50**
(You save \$4.50)
SKU: 711-3010P
Pack: 3 Pair

Product Description

- Contemporary Styling and superb quality
- A new generation of the GOLDTOE® brand
- Comfort toe seams
- Reinforced Toe for longer wear
- Cocona is derived from volcanic minerals and other safe & natural sources
- Cocona is integral to the fiber, naturally occurring and cannot wash out

Rating: ★★★★★ (2 product reviews)

Contents:
65% POLYESTER, 17% OLEFIN, 16% NYLON, 2% SPANDEX,
Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$6.00~~ **\$6.00**
★★★★★

SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★★

SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$17.00~~ **\$12.75**
★★★★★

SHOP

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RELATED PRODUCTS



3 Pair Sport Liner
~~\$10.00~~ **\$7.50**
★★★★★



Wimbledon 3 pair
~~\$10.00~~ **\$7.50**
★★★★★

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ULTRATEC SHORT CREW 3 PR

Men's Socks

Style #: 2194S
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2194S
Pack: 3 Pair

Product Description

- Soft combed cotton for comfort
- Hydrotec moisture control
- Antimicrobial protection to keep socks fresh
- Heels and toes are reinforced for longer wear
- Spandex ensures a perfect fit

Rating: ★★★★★ (5 product reviews)

Contents:
80% Cotton, 14% Nylon, 5% Polyester, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

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2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★★ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$47.00~~ **\$12.75**
★★★★★ SHOP

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6 PR COTTON LINER EXTENDED

Men's Socks

Style #: 656FE
 Price: ~~\$21.00~~
 Your Price: **\$15.75**
 (You save \$5.25)
 SKU: 711-656FE
 Pack: 6 Pair

Product Description

- A soft, breathable sock that absorbs sweat
- Keeps feet cool and dry
- Cushioned bottoms and gold panel at toe

Rating: ★★★★★ (1 product review)

Contents:
 79% Cotton, 20% Nylon, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$4.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

Product Reviews

WRITE A REVIEW

1. Best low-rise I've found ★★★★★
 Posted by Jarret on 19th Jul 2013

So, I have waited a few months since I have ordered these socks and I must say I'm very impressed. They have shown no form of wear and are still extremely comfortable. These socks handle a lot with me as I wear them to the gym, work, and just while I'm around the house. Unlike many other socks I have worn (Nike, Under Armour), these are affordable and fit a size larger than advertised (my shoes size is 17) and more importantly they have not ripped at the heel or toe.

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CUSHION TEC® CREW

Men's Socks

Style #: 2024S
 Price: ~~\$16.00~~
 Your Price: **\$12.00**
 (You save \$4.00)
 SKU: 711-2024S
 Pack: 3 Pair

Product Description

- Soft combed cotton
- Zoned cushioning
- Secure fit arch support
- Y heel for fit
- Reinforced Toe

Rating: ★★★★★ (2 product reviews)

Contents:
 75% Cotton, 16% Stretch Nylon, 8% Polyester, 1% LYCRA
 Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$4.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$17.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews | Size Chart

Product Reviews

WRITE A REVIEW

1. Unbeatable ★★★★★

Posted by Bill Maniaci on 5th Sep 2014

I am a retired soldier and I also retired from my second career as a police officer. I have literally worn out boots before these socks finally needed to be pressed into service as "old rags". I am buying three of the three-packs. They will be put to use again, as boot socks and in-the- house socks with slippers this winter. It's going to be years before they will need to be replaced. They are tough, comfortable, very well made and always hold their shape. These Gold Toe socks are, in a word, unbeatable.

2. Wears like iron, feels like a cloud ★★★★★

Posted by RachelChana on 7th Jul 2014

I'm a female with hard to fit feet, medical issues, and I'm hard on socks. Honestly, GoldToe could go out of business selling well made socks that last for so many years. LOL. Bought my first multi-pair pack in the men's department and have stayed with this Cushion Tec design for many years. Absolutely no seam at the toe, the sole cushioning lasts forever, socks keep their shape and softness through hot water washings and bleachings. I just can't say more. Best day to day sock I have ever worn. No blisters ever.

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ULTRA TEC EXTENDED OTC

Men's Socks

Style #: 287HE
Price: ~~\$18.00~~
Your Price: **\$13.50**
(You save \$4.50)
SKU: 711-287HE
Pack: 3 Pair

Product Description

- Soft and Breathable
- Keeps feet cool and dry
- Cushioned foot to absorb shock
- Reinforced Toe for better fit comfort and wear

Rating: ★★★★★ (6 product reviews)

Contents:
80% Cotton, 15% Nylon, 4% Polyester, 1% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

ADD TO CART

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BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★★ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★★ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$47.00~~ **\$12.75**
★★★★★ SHOP

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CUSHION LINER 4 PACK

Men's Socks

Style #: 2764P
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2764P
Pack: 4 Pair

Product Description

- Soft and Breathable
- Keeps feet cool and dry
- Cushioned foot to absorb shock
- Reinforced Toe for better fit comfort and wear

Contents:
82% Cotton, 16% polyester, 1% Nylon, 1% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size:
Color:
Quantity:

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★☆ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★☆ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$47.00~~ **\$12.75**
★★★★☆ SHOP

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Coolmax® Cushion Low Cut Liner, 3 Pack
~~\$13.00~~ **\$9.75**
★★★★☆

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SOLEUTION SPORT ULTRA TEC® LINER

Men's Socks

Style #: 2395P
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2395P
Pack: 3 Pair

Product Description

- Freshtex antimicrobial
- Hydrotec moisture control
- Soft combed cotton
- Reinforced heel & toe

Contents:
74% Cotton, 15% Stretch Nylon, 10% Polyester, 1% Spandex
Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★☆ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★☆ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$17.00~~ **\$12.75**
★★★★☆ SHOP

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RELATED PRODUCTS



AquaFX® Soleution Crew
~~\$17.00~~ **\$12.75**
★★★★☆



AquaFX® Soleution Tab Liner
~~\$17.00~~ **\$12.75**
★★★★☆



AquaFX® Soleution Quarter
~~\$17.00~~ **\$12.75**
★★★★☆

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CUSHION TEC® QUARTER

Men's Socks

Style #: 2192P
 Price: ~~\$16.00~~
 Your Price: **\$12.00**
 (You save \$4.00)
 SKU: 711-2192P
 Pack: 3 Pair

Product Description

- Features moisture-wicking high bulk acrylic
- Antimicrobial protection to keep feet fresh
- Reinforced heel and toe for longer wear
- Spandex ensures a perfect fit
- Clincher foot provides arch support
- Double cushioning absorbs shock

Rating: ★★★★★ (2 product reviews)

Contents:
 81% Acrylic, 18% Nylon, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
 Color: Choose a Color ▼
 Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$16.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews | Size Chart

Product Reviews

WRITE A REVIEW

1. The only socks I wear. ★★★★★
 Posted by Anchorage, AK on 5th Dec 2012

I found a bag of these socks at a wholesale store and bought them to replace my old cotton big box superstore socks. The first time I put a pair of these socks on I knew I would only wear these specific socks until I couldn't find them anymore. I would say that I have swamp feet year around, no matter where I am and what the humidity (from the South East to the Mountain West), activity level, or shoes I wear. These are the best socks I have ever found to keep my feet as comfortable as possible. Since they are completely synthetic, they WICK MOISTURE and DRY QUICKLY! I wish I could find them in a taller style.

2. Moisture wicking? Not so much ★★★★★
 Posted by John s. on 28th May 2012

Just bought a pack of these socks and after wearing each pair twice realized that the wicking claim is more claim than fact. Might be good in the winter (keeps your feet warm) but not so much in the FL. summer.

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CUSHIONED COTTON 4 PACK

Men's Socks

Style #: 2767S
 Price: ~~\$16.00~~
 Your Price: **\$12.00**
 (You save \$4.00)
 SKU: 711-2767S
 Pack: 4 Pair

Product Description

- Soft and Breathable
- Keeps feet cool and dry
- Cushioned foot to absorb shock
- Reinforced Toe for better fit comfort and wear

Rating: ★★★★★ (1 product review)

Contents:
 79% Cotton, 15% Polyester, 4% Nylon, 2% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
 Color: Choose a Color ▼
 Quantity: 1 ▼

ADD TO CART

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BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$16.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

Product Reviews

WRITE A REVIEW

1. Product size range is incorrect. ★★★★★
 Posted by Unknown on 23rd Mar 2013

I wear a shoe size ranging from 11 1/2 to 12, but after several washings, I have to struggle to put them on. They are way too tight.

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6 PR COTTON SPORT LINER

Men's Socks

Style #: 2247P
 Price: ~~\$20.00~~
 Your Price: **\$15.00**
 (You save \$5.00)
 SKU: 711-2247P
 Pack: 6 Pair

Product Description
 Soft, breathable sock that absorbs sweat Keeps feet cool and dry
 Cushioned bottoms and gold panel at toe

Rating: ★★★★★ (1 product review)

Contents:
 80% Cotton, 19% Nylon, 1% Spandex Exclusive of
 Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

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BEST SELLERS

1



2



3



Reviews | Size Chart

Product Reviews

WRITE A REVIEW

1. Best socks ever ★★★★★
 Posted by Petr on 11th Sep 2012

If you are very active and you like you feet dry,then buy this one ;-)

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6 PR COTTON NO SHOW

Men's Socks

Style #: 656F

Price: ~~\$20.00~~

Your Price: **\$15.00**
(You save \$5.00)

SKU: 711-656F

Pack: 6 Pair

Product Description

- A soft, breathable sock that absorbs sweat
- Keeps feet cool and dry
- Cushioned bottoms and gold panel at toe

Contents:
75% Cotton, 19% Polyester, 5% Nylon, 1% Spandex, Exclusive of Ornamentation

IMPORTED

Options



Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

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BEST SELLERS

English Rib Lisle Non-Elastic Top
1 Pack
~~\$4.00~~ **\$6.00**
★★★★☆ SHOP

Basic Support Over the Calf
1 Pack
~~\$14.00~~ **\$12.00**
★★★★☆ SHOP

Ultra Tec Over the Calf
3 Pack
~~\$37.00~~ **\$12.75**
★★★★☆ SHOP

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Product Reviews

This product hasn't received any reviews yet. Be the first to review this product!

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6 PR COTTON CREW

Men's Socks

Style #: 656S
 Price: ~~\$20.00~~
 Your Price: **\$15.00**
 (You save \$5.00)
 SKU: 711-656S
 Pack: 6 Pair

Product Description

- A soft, breathable sock that absorbs sweat
- Keeps feet cool and dry
- Cushioned bottoms and gold panel at toe
- New colors added!

Rating: ★★★★★ (36 product reviews)

Contents:
 78% Cotton, 11% Polyester, 9% Nylon, 2% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

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BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$12.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

Product Reviews

WRITE A REVIEW

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1. This is literally the only sock I own ★★★★★
 Posted by Unknown on 12th Dec 2014

I love this sock so much I threw out all my other pairs and only wear these! It makes matching socks a non-issue.

Please put out a pack with just the dark browns, though! I want the dark brown, but not the grey & light brown.

2. Navy is Missing??? ★★★★★
 Posted by Tom on 9th Nov 2014

Please bring back the Navy color.

3. White crew socks ★★★★★
 Posted by Mike R. on 11th Oct 2014

When are you going to get the white crew style #656S socks in? Need them!!!!

4. More colors ★★★★★
 Posted by David S. on 1st Oct 2014

Wish you would bring back BROWN.

5. Gray Please ! ★★★★★
 Posted by Unknown on 1st Oct 2014

Please bring back the gray.

6. I love the grey crew ★★★★★
 Posted by Joe Channey on 28th Sep 2014

Where are the 6 pack of grey crew?

7. Where did Gray go????? ★★★★★
 Posted by Unknown on 5th Apr 2014

PLEASE MAKE GRAY!

8. GREY ★★★★★
 Posted by Unknown on 29th Mar 2014

would like to have grey!

9. Short White Cotton Crew Socks Why did you stop making ★★★★★
 Posted by Unknown on 10th Mar 2014

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Why did you stop making 100% cotton white crew socks?Short style

10. where are the Acrylic ??? ★★★★★
Posted by Bruce Warren on 10th Mar 2014

they use to have Acrylic are they not making them anymore???

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6 PR COTTON LINER EXTENDED

Men's Socks

Style #: 656FE
 Price: ~~\$21.00~~
 Your Price: **\$15.75**
 (You save \$5.25)
 SKU: 711-656FE
 Pack: 6 Pair

Product Description

- A soft, breathable sock that absorbs sweat
- Keeps feet cool and dry
- Cushioned bottoms and gold panel at toe

Rating: ★★★★★ (1 product review)

Contents:
 79% Cotton, 20% Nylon, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$4.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

Product Reviews

WRITE A REVIEW

1. Best low-rise I've found ★★★★★
 Posted by Jarret on 19th Jul 2013

So, I have waited a few months since I have ordered these socks and I must say I'm very impressed. They have shown no form of wear and are still extremely comfortable. These socks handle a lot with me as I wear them to the gym, work, and just while I'm around the house. Unlike many other socks I have worn (Nike, Under Armour), these are affordable and fit a size larger than advertised (my shoes size is 17) and more importantly they have not ripped at the heel or toe.

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PHEASANTS

Men's Socks

Style #: 4096S
 Price: ~~\$9.00~~
 Your Price: **\$4.50**
 (You save \$4.50)
 SKU: 711-4096S
 Pack: 1 Pair

Product Description

- Gold Toe Premier socks are made from the finest and most innovative yarns available
- Spandex is used throughout for a Perfect Fit
- AquaFX Moisture Control system keeps your feet drier and more comfortable all day long
- The toes are reinforced for longer wear and durability

Contents:
 70% Pima Cotton, 27% Nylon, 3% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▾

Color: Choose a Color ▾

Quantity: 1 ▾

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BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$16.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews | Size Chart

Product Reviews

WRITE A REVIEW

This product hasn't received any reviews yet. Be the first to review this product!

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SOLUTION SPORT CUSHION TEC® LINER

Men's Socks

Style #: 2026P
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2026P
Pack: 3 Pair

Product Description

- Soft combed cotton
- Zoned cushioning
- Secure fit arch support
- Y heel for fit
- Reinforced Toe

Rating: ★★★★★ (1 product review)

Contents:
66% Cotton, 20% Stretch Nylon, 13% Polyester, 1% Spandex
Exclusive of Ornamentation

IMPORTED

Options

Shoe Size:
Color:
Quantity:

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★★ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★★ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$47.00~~ **\$12.75**
★★★★★ SHOP

Reviews | Size Chart

Product Reviews

WRITE A REVIEW

1. great socks ★★★★★

Posted by Unknown on 26th Nov 2014

These are great socks that keep my feet cool and comfortable. Cushioning is great for running too - just the right amount.

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ULTRATEC QTR 3 PR

Men's Socks

Style #: 2186P
Price: ~~\$16.00~~
Your Price: **\$12.00**
(You save \$4.00)
SKU: 711-2186P
Pack: 3 Pair

Product Description

- Soft combed cotton for comfort
- Hydrotec moisture control
- Antimicrobial protection to keep socks fresh
- Heels and toes are reinforced for longer wear
- Spandex ensures a perfect fit

Contents:
78% Cotton, 13% Nylon, 8% Polyester, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$6.00~~ **\$6.00**
★★★★☆ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$12.00~~ **\$12.00**
★★★★☆ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$12.75~~ **\$12.75**
★★★★☆ SHOP

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CUSHION QUARTER 3 PACK

Men's Socks

Style #: 2771P
Price: ~~\$12.00~~
Your Price: **\$9.00**
(You save \$3.00)
SKU: 711-2771P
Pack: 3 Pair

Product Description

- Soft and breathable
- Keeps feet cool and dry
- Cushioned foot to absorb shock
- Reinforced toe for better fit, comfort and wear

Contents:
80% Cotton, 16% Polyester, 3 % Nylon, 1% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size:
Color:
Quantity:

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★☆ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$12.00~~ **\$12.00**
★★★★☆ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$12.75~~ **\$12.75**
★★★★☆ SHOP

Related Products | Reviews | Size Chart

RELATED PRODUCTS



Cushion Tec® Quarter
~~\$16.00~~ **\$12.00**
★★★★☆

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OVER \$50

6 PR COTTON QUARTER SOCK

Men's Socks

Style #: 656P
 Price: ~~\$20.00~~
 Your Price: **\$15.00**
 (You save \$5.00)
 SKU: 711-656P
 Pack: 6 Pair

Product Description

A soft, breathable sock that absorbs sweat Keeps feet cool and dry Cushioned bottoms and gold panel at toe

Rating: ★★★★★ (4 product reviews)

Contents:
 76% Cotton, 17% Polyester, 5% Nylon, 2% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$4.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$47.00~~ **\$12.75**
 ★★★★★ SHOP

Reviews Size Chart

Product Reviews

WRITE A REVIEW

1. Mr. Pitt would love these socks! ★★★★★

Posted by Ricardo on 7th Dec 2014

I have been searching for a nice pair of black socks. I am rarely satisfied. The socks I have had are either too thin, too tight, don't stay up, or I have to pay a lot for designer socks.

These socks are the best. They get on easy, feel great, and stay in place. I went back to the store and bought 6 more in packs of 8. At 51 years old I will probably never have to buy another pair of black socks.

Thanks Gold Toe!

2. They shrink a lot ★★★★★

Posted by Carlos on 12th Nov 2014

After the first wash they shrink a lot, probably because of the spandex, I had different quarter goldtoe socks but with different contents and didn't shrink so they fit comfortably.

3. great ★★★★★

Posted by Unknown on 20th Oct 2012

great

4. Perfect ★★★★★

Posted by Unknown on 9th May 2012

These socks are perfect for athletic and everyday wear. Great for the gym!

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AquaFX® Soleution Crew - GoldToe.com

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25% OFF SITE WIDE
Includes CLEARANCE

FREE SHIPPING
OVER \$50



AQUAFX® SOLEUTION CREW

Men's Socks

Style #: 2338S
Price: ~~\$17.00~~
Your Price: **\$12.75**
(You save \$4.25)
SKU: 711-2338S
Pack: 3 Pair

Product Description

- Great to wear with boots!
- Premium Zone Cushioning
- AquaFX® Moisture Control wicks away moisture to keep feet dry and comfortable all day

Rating: ★★★★★ (5 product reviews)

Contents:
38% Rayon made from Bamboo, 38% Cotton, 21% Nylon, 3% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$6.00~~ **\$6.00**
★★★★★ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$12.00~~ **\$12.00**
★★★★★ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$12.75~~ **\$12.75**
★★★★★ SHOP

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1/1

1/2/2015

AquaFX® Soleution Tab Liner - GoldToe.com

MEN'S UNDERWEAR | MEN'S CASUALWEAR | WOMEN'S SOCKS | KIDS' SOCKS

25% OFF SITE WIDE
Includes CLEARANCE

FREE SHIPPING
OVER \$50



AQUAFX® SOLEUTION TAB LINER

Men's Socks

Style #: 2374P
Price: ~~\$17.00~~
Your Price: **\$12.75**
(You save \$4.25)
SKU: 711-2374P
Pack: 3 Pair

Product Description

- Premium Zone Cushioning
- AquaFX® Moisture Control wicks away moisture to keep feet dry and comfortable all day

Rating: ★★★★★ (3 product reviews)

Contents:
41% Rayon made from Bamboo, 41% Cotton, 16% Nylon,
Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
Color: Choose a Color ▼
Quantity: 1 ▼

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BEST SELLERS



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AquaFX® Soleution Quarter - GoldToe.com

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25% OFF SITE WIDE
Includes CLEARANCE

FREE SHIPPING
OVER \$50



AQUAFX® SOLEUTION QUARTER

Men's Socks

Style #: 2339P
Price: ~~\$17.00~~
Your Price: **\$12.75**
(You save \$4.25)

SKU: 711-2339P
Pack: 3 Pair

Product Description

- Premium Zone Cushioning
- AquaFX® Moisture Control wicks away moisture to keep feet dry and comfortable all day

Rating: ★★★★★ (3 product reviews)

Contents:
39% Rayon made from Bamboo, 39% Cotton, 19% Nylon, 3% Spandex, Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼

Color: Choose a Color ▼

Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
1 Pack
~~\$8.00~~ **\$6.00**
★★★★★ SHOP

2



Basic Support Over the Calf
1 Pack
~~\$16.00~~ **\$12.00**
★★★★★ SHOP

3



Ultra Tec Over the Calf
3 Pack
~~\$47.00~~ **\$12.75**
★★★★★ SHOP

Related Products | Reviews | Size Chart

RELATED PRODUCTS



AquaFX® Quarter 3 pair
~~\$14.00~~ **\$10.50**



SoleUtion Sport Ultra Tec® Liner
~~\$16.00~~ **\$12.00**



AquaFX® Soleution Crew
~~\$17.00~~ **\$12.75**
★★★★★



AquaFX® Soleution Tab Liner
~~\$17.00~~ **\$12.75**
★★★★★

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Shop 6 Pr Cotton Crew Extended at Goldtoe.com Now

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6 PR COTTON CREW EXTENDED

Men's Socks

Style #: 656SE
 Price: ~~\$21.00~~
 Your Price: **\$15.75**
 (You save \$5.25)
 SKU: 711-656SE
 Pack: 6 Pair

Product Description

- A soft, breathable sock that absorbs sweat
- Keeps feet cool and dry
- Cushioned bottoms and gold panel at toe

Rating: ★★★★★ (4 product reviews)

Contents:
 81% Cotton, 18% Nylon, 1% Spandex Exclusive of Ornamentation

IMPORTED

Options

Shoe Size: Choose a Shoe Size ▼
 Color: Choose a Color ▼
 Quantity: 1 ▼

ADD TO CART

ADD TO WISH LIST



BEST SELLERS

1



English Rib Lisle Non-Elastic Top
 1 Pack
~~\$8.00~~ **\$6.00**
 ★★★★★ SHOP

2



Basic Support Over the Calf
 1 Pack
~~\$12.00~~ **\$12.00**
 ★★★★★ SHOP

3



Ultra Tec Over the Calf
 3 Pack
~~\$12.75~~ **\$12.75**
 ★★★★★ SHOP

Reviews | Size Chart

WRITE A REVIEW

Product Reviews

1. Gold Toe Large Sizes Downsized ★★★★★
 Posted by Unknown on 19th Dec 2014

Found these socks at JCP. Bought them for several years and LOVED the cotton comfort. They fit a larger size foot and calf. Last year, same size, same price, but found the sock is now much, much smaller. [As in no longer wearable.] Hoped for a manufacturing error, but it seems the adjustment is systematic. Just a warning. Pull a pair out of the package if possible and compare to the size you need. (Or check the return policy wherever you buy.)

2. Durable and comfortable ★★★★★
 Posted by James Goodman on 14th Nov 2014

I love these socks. They provide good support for aging blood vessels. I bought six pairs of these socks four years ago. I wear them virtually every day, though enough of them have worn holes so I'm running low, now about to buy more. The styles and numbers have changed, but the nearest one -- Cotton Crew Extended -- costs a bit less than I paid in 2010. I hope they last as long!

In reference to another review: The ones I bought four years ago were stretchy, so this isn't a recent change.

3. THE EXTENDED SIZE HAS BEEN MODIFIED ★★★★★
 Posted by BIJ on 25th Jul 2014

THE SOCKS HAVE BEEN SHORTENED AND MADE MORE STRETCHY. FOR ME I PREFER THE OLD NON STRETCHY LONGER UPPERS. I ALSO HAVE A PROBLEM WITH THE HEEL WEARING OUT QUICKLY.

4. gold toe extended size crew socks ★★★★★
 Posted by Unknown on 17th Jun 2014

i have used these socks for years & their still the same. the heel wears out first. if the heel didn't wear out i could get another year out of them. also, the last couple years they look like baby socks. sock size 13 - 15, i have to stretch them & they shrink up tight against my toes. don't like, thats why i buy extended size.

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EXHIBIT 9

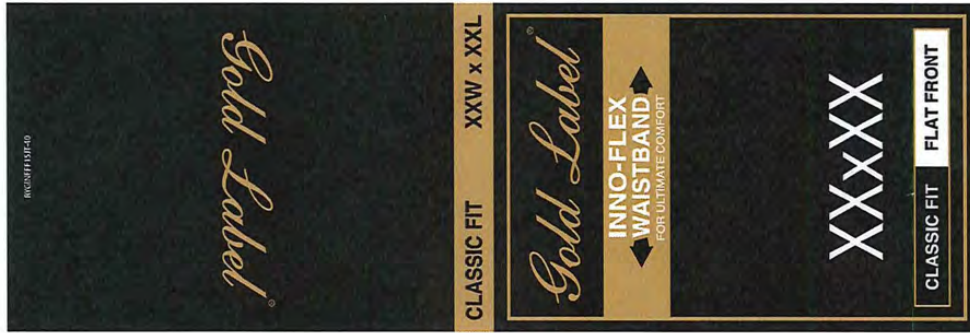
JILLARD'S GOLD LABEL DRESS SHIRT PACKAGING



ILLARD'S GOLD LABEL PANT PACKAGING



GOLD LABEL PANT POCKET FLASHER



GOLD LABEL PANT JOKER TICKET



GOLD LABEL PANT HANGTAG



LARD'S GOLD LABEL SPORTSWEAR SHIRT PACKAGING



EXHIBIT 10



Direct line: (514) 744-8567
Direct fax: (514) 734-8379
mreit@gildan.com

BY UPS

September 23, 2014

Dean Worley, Esq.
General Counsel
Dillard's, Inc.
1600 Cantrell Road
Little Rock, AR 72201

Re: Infringement of Gildan's GOLDTOE Trade Dress

Dear Mr. Worley:

I write to you today on behalf of Gildan Activewear, Inc. and its affiliates (collectively, "Gildan"). As you are likely aware, Gildan is a leading manufacturer and marketer of branded apparel, including its GILDAN, GOLDTOE and ANVIL clothing.

For several years, Gildan's GOLDTOE men's athletic socks have been sold in distinctive packaging featuring a blue band with contrasting gold elements and white lettering for its word mark having two components, the first of which is the term "GOLD." On the upper-right side of the front of the packaging is a gold partially serrated rectangle which informs consumers how many pairs of socks are included in the package, and gold color is also used in the band's side panels.

Gildan and its predecessors in interest have used this distinctive packaging design in conjunction with GOLDTOE men's athletic socks since at least as early as March 2011, and the packaging has been seen by millions of consumers in many of the nation's leading clothing retailers and elsewhere. Due to its continuous use of the distinctive packaging, Gildan owns common law trade dress rights in the design of its GOLDTOE men's athletic socks packaging, which consumers have come to associate solely with Gildan and its GOLDTOE products.

Gildan learned recently that Dillard's has begun selling socks under its GOLD LABEL house brand in packaging that is highly similar to, and obviously imitative of, the packaging used with the GOLDTOE men's athletic socks packaging. Specifically, and as shown in the attached images, Dillard's GOLD LABEL packaging incorporates each of the features described above and associated with the GOLDTOE men's athletic socks

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555, boulevard de Maisonneuve, 33^{ème} étage, Montréal (Québec) Canada, H3A 2J2

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Case 3:14-cv-00590-MOC-DSC Document 36-7 Filed 02/13/15 Page 2 of 9

GT00029



packaging. This copying of the GOLDTOE packaging by Dillard's is likely to cause consumers to believe, mistakenly, that Dillard's GOLD LABEL socks originate from, or are otherwise associated or affiliated with, Gildan or its GOLDTOE socks in violation of several laws including, without limitation, Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). Such confusion is even more likely given that (as is also shown in the attached images) Dillard's stores are mixing GOLDTOE men's athletic socks with GOLD LABEL socks in retail displays that bear a GOLD LABEL sign above those displays. Upon information and belief, Dillard's copying of the GOLDTOE trade dress for its GOLD LABEL packaging is part of an intentional effort to move its customers away from the GOLDTOE brand and towards Dillard's GOLD LABEL house brand. In any event, Dillard's blatant mimicry constitutes willful infringement of Gildan's proprietary trade dress.

Accordingly, we demand that Dillard's immediately: 1) remove from its stores and destroy the packaging of all merchandise having the infringing GOLD LABEL packaging; 2) cease all other use of the infringing GOLD LABEL packaging; 3) disclose to Gildan the unit volume of GOLD LABEL socks sold in the infringing packaging, along with the gross profits earned from these sales; 4) disclose to Gildan the supplier from which Dillard's acquires the infringing GOLD LABEL packaging; and 5) cease its display of GOLDTOE socks in retail displays with GOLD LABEL signs above those displays and any display of GOLD LABEL socks in retail displays with GOLDTOE signs above those displays.

This matter is of significant concern to Gildan, but it is hopeful that an amicable resolution can be reached. Towards that end, I look forward to hearing from you by October 6, 2014 with your written assurances that Dillard's has complied with the demands above. Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in blue ink that reads "Maria Reit". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Maria Reit

Director, Legal Affairs – Intellectual Property and Global Marketing

Encl.

MR/nl

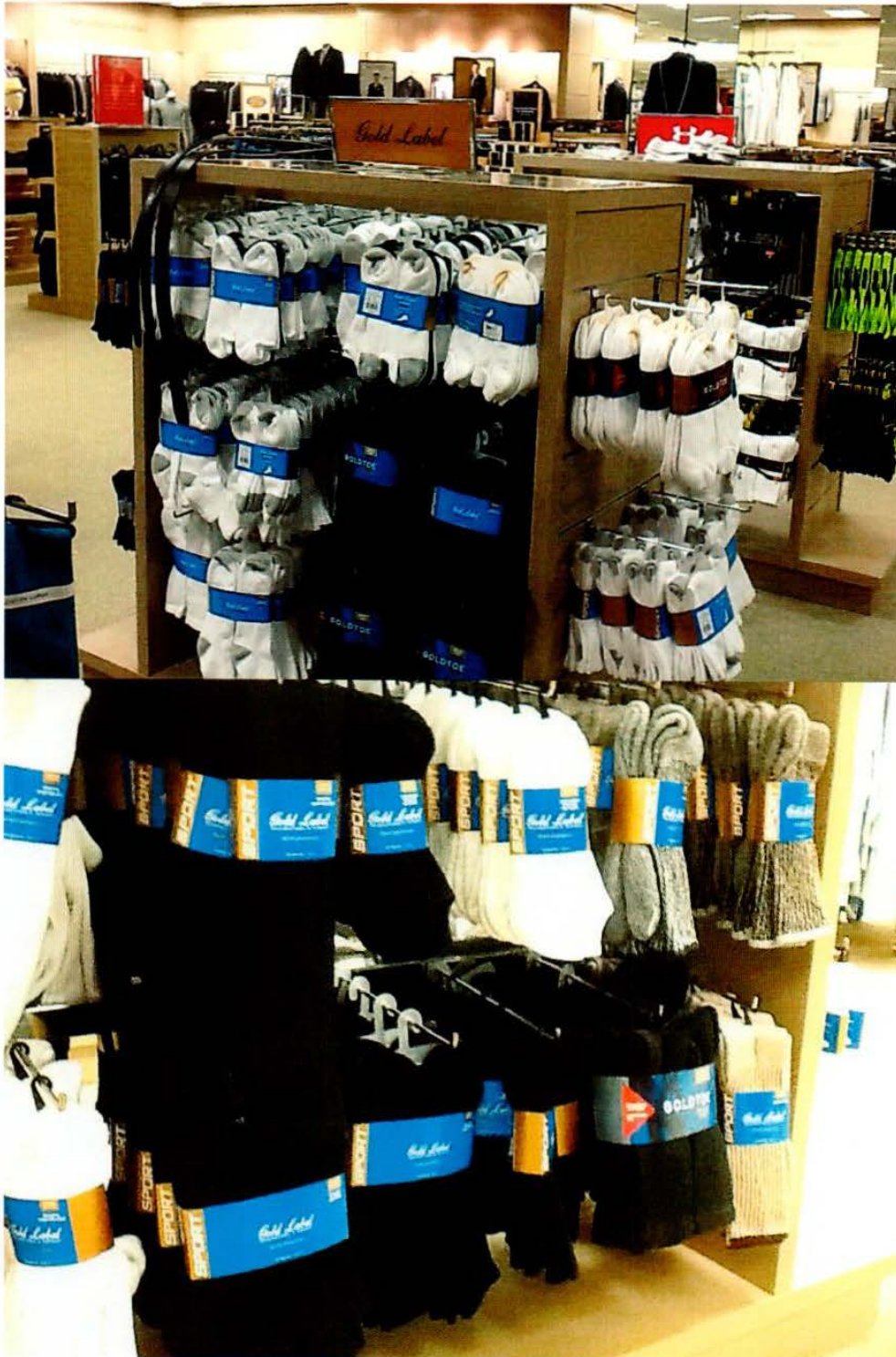
cc: Lindsay Matthews
Vice-President, General Counsel and Corporate Secretary

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GT00030









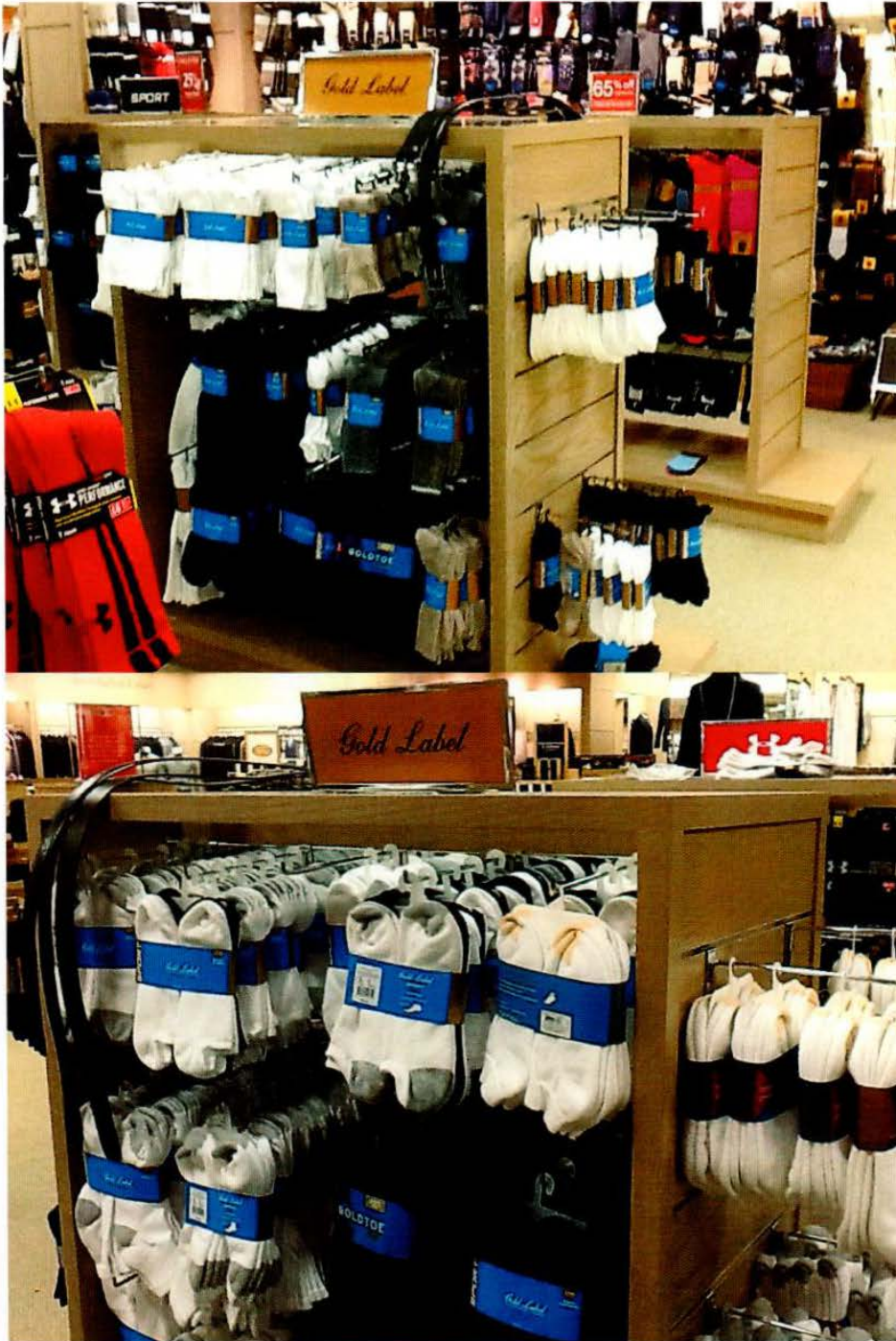




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STEPHEN G. ADRIAN
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BENRUSHI PATENT AGENT*
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YOSHIYA NAKAMURA**

*Not admitted in DC; practice limited to matters and proceedings before federal courts and agencies

**Limited Recognition at the U.S. Patent Office

September 30, 2014

Maria Reit
Director, Legal Affairs – Intellectual Property and Global Marketing
600, boulevard de Maisonneuve Ouest
33^{ième} étage
Montréal (Québec)
Canada

FED. R. EVID. 408

Re: Infringement of Gildan's GOLDTOE Trade Dress

Dear Ms. Reit:

This will refer to your September 23, 2014 letter addressed to Dean Worley, General Counsel of Dillard's, Inc. ("Dillard's"), which has been referred to our office for consideration and appropriate reply.

We note that Gildan claims to own "...common law trade dress rights in the design of its GOLDTOE men's athletic socks packaging [which you claim to be a distinctive design], which consumers have come to associate solely with Gildan and its GOLDTOE products". At the outset, we question that the asserted "distinctive packaging design" is in fact distinctive. In our considered opinion, the so-called "blue band with contrasting gold elements and white lettering for its word mark" is purely ornamental, and certainly not inherently distinctive. In this regard, we note that Gildan did not think enough of the asserted trade dress to seek federal trademark protection despite the fact that it apparently owns numerous federal trademark registrations for other marks, including design marks.

Based upon this initial assessment, in order for Gildan to establish a protectable interest in its asserted trade dress, it would be necessary for Gildan to establish that the purely ornamental "packaging design" has acquired distinctiveness. While you have asserted that "... since at least as early as March, 2011, ... the packaging has been seen by millions of consumers in many of the nation's leading clothing retailers and elsewhere", even if true, that in and of itself does not establish that consumers focus on the packaging design and that the asserted trade dress has, in fact, acquired distinctiveness. And, certainly, there is nothing submitted with and/or claimed in your letter that establishes that Gildan treats the asserted trade dress as a trademark and promotes it as such to the purchasing public.

Maria Reit
September 30, 2014
Page 2

As I see that you are writing from Canada, I would note that, as a general rule under U.S. law, for matter that is not inherently distinctive because of its nature (e.g., nondistinctive product design, overall color of a product, and mere ornamentation), evidence of extended use alone is not sufficient to show acquired distinctiveness. In such a case, actual evidence that the mark is perceived by the consuming public as a mark for the relevant goods would be required to establish distinctiveness. No such proof has been proffered here.

A review of Gildan's Goldtoe web page, www.goldtoe.com, is consistent with our skepticism, as there appears to be no effort whatsoever by Gildan to focus the consumer's attention on the asserted trade dress. In fact, the noted web page appears to show the contrary in its offer of the below differently packaged blue-banded athletic socks:



On behalf of Dillard's, we take this opportunity to assure you that it endeavors to respect the intellectual property rights of others, when it is first satisfied that protectable rights exist. In this instance, we call upon you to provide evidence of Gildan's promotion of its asserted trade dress as a trademark or otherwise to establish its acquired distinctiveness as an indication of source or origin rather than merely an ornamental

Maria Reit
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Page 3

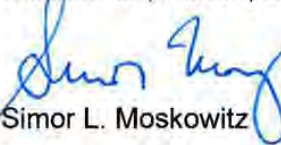
package design. Once such evidence is received, we will promptly revisit your claim and provide our further response.

Lastly, and without in any way admitting or conceding your position and/or liability, or acknowledging a likelihood of confusion, please be advised that Dillard's will consider taking steps to separate the in-store displays of the respective Dillard's and Gildan socks.

In view of the foregoing, we await your reply.

Very truly yours,

Westerman, Hattori, Daniels & Adrian, LLP



Simor L. Moskowitz

cc: Dean Worley, Esq.
Steven Duke, Esq.

EXHIBIT 12

Gildan's USPTO Trademark Registrations and Applications to Register Trademarks

	Serial No.	Registration No.	Word Mark	Filing Date
1	86315560		RAIN REPEL	June 20, 2014
2	86298601		ALL PRO	June 3, 2014
3	86022145		GILDAN PERFORMANCE	July 29, 2013
4	86300568		POWER PLAY	June 4, 2014
5	86298718		POWERSOX	June 3, 2014
6	86298709		G	June 3, 2014
7	86298624		SOLEUTION	June 3, 2014
8	86298611		G	June 3, 2014
9	86006301		AQUA DEFENSE	July 10, 2013
10	86231601		GOLDLINE	March 25, 2014
11	86387711		SILKS ILLUSION	September 8, 2014
12	86119258		SOFTOES	November 14, 2013
13	86314173		GOLD TOE PREMIER	June 19, 2014
14	86331569		SILVER TOE	July 8, 2014
15	86449805		GILDAN SUPPLY & CO.	November 10, 2014
16	86298732		GT A GOLD TOE BRAND	June 3, 2014
17	86438716		TEMPFX	October 29, 2014
18	86125574		THERMO SHIELD	November 21, 2013
19	86343210		THERAPY PLUS	July 21, 2014
20	86095580		TEMPFX	October 18, 2013
21	86298637		GOLD TOE	June 3, 2014
22	86322832		PRO A GOLD TOE BRAND	June 27, 2014
23	86318716		GOLD TOE PREMIER	June 24, 2014
24	86315566		DRY GUARD	June 20, 2014
25	86057987		AQUAFX	September 6, 2013
26	86057969		FRESHCARE	September 6, 2013
27	86005275			July 9, 2013
28	86140435	4579586	ANVIL	December 11, 2013
29	86318733		MOBILITY STRETCH	June 24, 2014
30	86057773	4546796	GOLDTOE	September 6, 2013
31	85957832		GILDAN PLATINUM	June 12, 2013
32	85736876		SIGNATURE SHADES BY KUSHYFOOT	September 24, 2012
33	85616891		COTTONFX	May 4, 2012
34	85616885		COTTONFX	May 4, 2012
35	85760070		EVERY THREAD COUNTS	October 22, 2012
36	85981178		SIGNATURE GOLD BY GOLDTOE	April 17, 2013
37	85796357	4632959	INTELLI-SOLES	December 6, 2012

38	85268221	4632662	GILDAN	March 16, 2011
39	85907198		SIGNATURE GOLD BY GOLDTOE	April 17, 2013
40	85769878		SOCKANISTA	November 2, 2012
41	85732644		THE BEST SOCKS ON TWO FEET	September 19, 2012
42	85536769		DURA MATES	February 8, 2012
43	85288028		POWER MOVES	April 6, 2011
44	85751128		EZ MATES	October 11, 2012
45	85576758		THE COLOR OF PERFECTION	March 22, 2012
46	85382427	4593223	AQUA FX ZONE	July 27, 2011
47	85522371	4175734		January 23, 2012
48	85330655	4166009		May 26, 2011
49	85215871	4400534	POWERVALUE	January 12, 2011
50	85176783	3938157	POWERSOX	November 15, 2010
51	85153612	3957847	GOLDTOE	October 15, 2010
52	85153578	3947965	POWERSOX	October 15, 2010
53	85137645	4518036	GILDAN PREMIUM COTTON	September 24, 2010
54	85135301	4165224	SHIRT SCAN	September 22, 2010
55	85135290	4161806	SHIRT SCAN	September 22, 2010
56	85135267	4068377	SHIRT SCAN	September 22, 2010
57	85113657	4158404	TRACK MY T	August 23, 2010
58	85113646	4158403	TRACK MY T WWW.TRACKMYT.COM	August 23, 2010
59	85111699	4350516	ONE SOX YOUR SPORT	August 19, 2010
60	85105852	3992503	GILDAN SOFTSTYLE	August 12, 2010
61	85078553	4396515	DRYBLEND	July 6, 2010
62	85071715	4004976	GENUINE STEWARDSHIP	June 25, 2010
63	78938054	3309926	SOLEUTION	July 26, 2006
64	78937990	3442946	GOLDTOE SOLEUTION	July 26, 2006
65	78918153	3317989	IRONSOX	June 27, 2006
66	78896595	3718665	GILDAN	May 31, 2006
67	78831280	3210933	PERFECT FIT	March 7, 2006
68	78711772	3218935	FRESHCARE	September 13, 2005
69	78707924	3231451	GOLD TOE PREMIER	September 7, 2005
70	78554285	3131112	SILVER TOE GEAR	January 26, 2005
71	78508163	3279342	GT A GOLD TOE BRAND	October 29, 2004
72	78222463	2849746	SOXMATES	March 6, 2003
73	78206201	2846805	CUSHION TEC	January 23, 2003
74	78466145	3119227		August 12, 2004
75	78448227	3104992		July 9, 2004
76	78370459	3281060		February 19, 2004
77	78336231	2979644	EVER WEAR	December 4, 2003

78	78323954	2959499		November 6, 2003
79	78202584	2817241	SETTING THE STANDARD	January 13, 2003
80	78190247	3026380	GILDAN FINDER.COM	December 2, 2002
81	78179095	3060831	SOLE 2 SOUL	October 28, 2002
82	78071212	2673300	EZ MATCH	June 27, 2001
83	77955770	3863723	ANVIL	March 10, 2010
84	77955750	3933644	ANVIL	March 10, 2010
85	77926121	4033167	TRACK MY T	February 2, 2010
86	77887431	3967161	STANDARD OF QUALITY	December 7, 2009
87	77873519	3813984	POWER SOX A GOLD TOE BRAND X	November 16, 2009
88	77871250	4491342	SMART BASICS	November 12, 2009
89	77862744	3998887	G	November 2, 2009
90	77856211	4365001	AURO	October 23, 2009
91	77847496	3998828	GOLDTOE	October 13, 2009
92	77847485	3998826	GOLD TOE	October 13, 2009
93	77843266	3905403	GREAT PERFORMANCE STARTS FEET FIRST	October 7, 2009
94	77808834	4432726	PART OF YOUR LIFE	August 20, 2009
95	77801601	3953108	POWER-LITES	August 11, 2009
96	77773476	4035443	SPILLGUARD	July 2, 2009
97	77750201	4295914	ALL PRO	June 2, 2009
98	77621356	3811663	ECO-FX	November 25, 2008
99	77621348	3929005	ECO-FX	November 25, 2008
100	77415071	3877319	ANVILRECYCLED	March 6, 2008
101	77397969	3828775	ANVILSUSTAINABLE	February 15, 2008
102	77310578	3741524	GOLDTOE MORETZ	October 23, 2007
103	77252176	3990322	ANVILORGANIC	August 10, 2007
104	77149810	3775103	AUROGANICS	April 5, 2007
105	77029782	3250356	SILVERTOE	October 26, 2006
106	77023665	3250352	GOLDTOE	March 27, 2007
107	76559816	2893048	ANVIL	October 30, 2003
108	76687135		ANATOMICAL PERFORMANCE FIT	February 27, 2008
109	76463729	2781599	G	November 1, 2002
110	76463728	2781598	G	November 1, 2002
111	76687136	3725892	APF	February 27, 2008
112	76590936	3043541	MAX SPUN	May 7, 2004
113	76590545	3006302	AQUAFX	May 5, 2004
114	76463727	2801963		November 1, 2002
115	76462707	2831431		October 29, 2002
116	76461806	3104313	TREADWELL	October 28, 2002
117	76435362	2799496		July 29, 2002

118	76339324	2954083		November 19, 2001
119	76276434	2694015	AURO	June 25, 2001
120	76179968	2751736	GOLD TOE	December 13, 2000
121	76135132	2586443	GOLD TOE GEAR	September 25, 2000
122	76041120	2707500	GOLD STANDARD	May 3, 2000
123	75704093	2870757	ULTRA BLEND	May 13, 1999
124	75727363	2525702	FALL PROOF	June 11, 1999
125	75650363	2319377	PRO-THICKS	February 26, 1999
126	75630275	2770527		January 29, 1999
127	75622752	2331852	FRESH SOLES	January 19, 1999
128	75312207	2381715	ULTRA COTTON	June 20, 1997
129	75307746	2215412	POWERF.I.T.	June 12, 1997
130	75307745	2215411	POWERF.I.T.	June 12, 1997
131	75242778	2160214	GOLD CLUB	February 18, 1997
132	75197421	2163413	STANDARD OF QUALITY	November 13, 1996
133	75185623	2075900	VAPOR-TECH	October 22, 1996
134	75103283	2139828	PERFECT FIT	May 13, 1996
135	75050736	2240936	ALL WALKS OF LIFE	January 29, 1996
136	74270361	1829880	GILDAN	April 28, 1992
137	74323039	1802161	ALL PRO	October 16, 1992
138	74680710	2056422		May 26, 1995
139	74668550	1994946	LEGEND BY GOLD TOE	May 1, 1995
140	74559762	1997463	POWER SOX	August 11, 1994
141	74525534	2114401	FOR ALL WALKS OF LIFE	May 17, 1994
142	74325824	1987386	FOOT UNDIES	October 26, 1992
143	74323035	1924671	GOLD TOE CLASSIC	October 16, 1992
144	74239513	1780355	GOLD TOE	January 22, 1992
145	74239325	1837930	GOLD TOE	January 22, 1992
146	74219519	1849356	SOCK VIEWS	November 7, 1991
147	74171849	1751939	COZY TREADS	May 31, 1991
148	74033025	1633270	MORETZ	February 27, 1990
149	74032998	1624975	MORETZ	February 27, 1990
150	73764138	1592084	COLOR MATCH	November 9, 1988
151	73239207	1197967	POWER PLAY	November 15, 1979
152	72190854	0783710	ANVIL	April 13, 1964
153	72155148	0770388		October 15, 1962
154	71340286	0308608		August 1, 1933
155	72155149	0770389	GOLD TOE	October 15, 1962
156	72122805	0761381	ADAM'S RIB	June 26, 1961
157	72360621	0903069	ANVIL	May 25, 1970

158	72229650	0819545		October 8, 1965
159	72132671	0740958	SILVER TOE	November 24, 1961
160	72097305	0711571	FLUFFIES	May 17, 1960
161	71360254	0347461	CUSHION-BILT	January 14, 1935

EXHIBIT 13

Int. Cl.: 25

Prior U.S. Cl.: 39

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 308,608
Registered Dec. 12, 1933
Renewal Term Begins Dec. 12, 1993

**TRADEMARK
PRINCIPAL REGISTER**



GAKM RESOURCES CORPORATION
(DELAWARE CORPORATION)
1105 NORTH MARKET STREET, SUITE
1300
WILMINGTON, DE 19899, BY ASSIGN-
MENT, MERGER, ASSIGNMENT, AS-
SIGNMENT AND ASSIGNMENT
FROM GREAT AMERICAN KNIT-
TING MILLS, INC. (DELAWARE COR-
PORATION) BECHTELSTVILLE, PA

THE REPRESENTATION OF A
STOCKING IN THE DRAWING FORMS
NO PART OF APPLICANT'S TRADE-
MARK.

THE DRAWING IS LINED FOR
GOLD.

FOR: HOSIERY, IN CLASS 39 (INT.
CL. 25).

FIRST USE 1-20-1932; IN COMMERCE
1-20-1932.

SER. NO. 71-340,286, FILED 8-1-1933.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Jan. 4, 1994.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 25

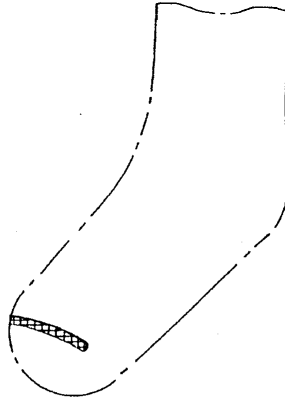
Prior U.S. Cls.: 22 and 39

Reg. No. 2,056,422

United States Patent and Trademark Office

Registered Apr. 22, 1997

**TRADEMARK
SUPPLEMENTAL REGISTER**



GAKM RESOURCES CORPORATION (DELA-
WARE CORPORATION)
575 FIFTH AVENUE
NEW YORK, NY 10017

FOR: HOSIERY, IN CLASS 25 (U.S. CLS. 22
AND 39).

FIRST USE 6-0-1994; IN COMMERCE
6-0-1994.

OWNER OF U.S. REG. NOS. 308,608 AND
770,389.

THE MATTER SHOWN BY THE DOTTED
LINES IS NOT A PART OF THE MARK AND

SERVES ONLY TO SHOW THE POSITION OF
THE MARK. THE DRAWING IS LINED FOR
THE COLOR GOLD.

THE MARK CONSISTS OF A GOLD LINE
ON THE CLOSING SEAM ACROSS THE TOP
OF THE TOE OF A STOCKING.

SER. NO. 74-680,710, FILED P.R. 5-26-1995;
AM. S.R. 6-3-1994.

CATHERINE KAISER KREBS, EXAMINING
ATTORNEY

EXHIBIT 14



Case 3:14-cv-00590-MOC-DSC Document 36-11 Filed 02/13/15 Page 2 of 3

GT00009



Case 3:14-cv-00590-MOC DSC Document 36-11 Filed 02/13/15 Page 3 of 3

GT000015

EXHIBIT 15



Case 3:14-cv-00590-MOC-DSC Document 36-12 Filed 02/13/15 Page 2 of 5

GT000021



on
his,"

Men's socks
25% OFF
February 5 - March 2

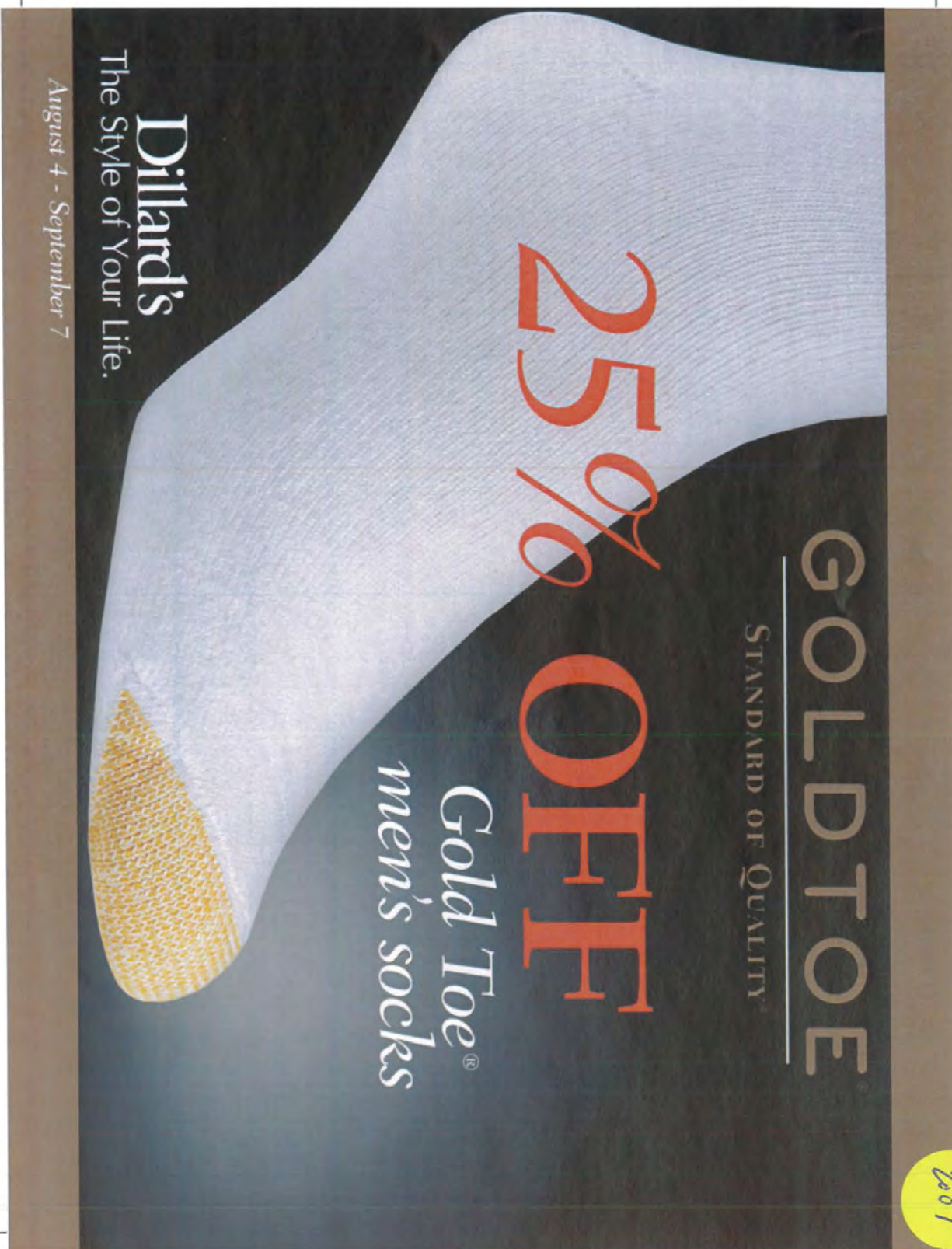
GOLDTOE
STANDARD OF QUALITY
Belk

© GoldToeMoc, LLC 2008

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Case 3:14-cv-00590-MOC-DSC Document 36-12 Filed 02/13/15 Page 4 of 5

GT00779



GOLDTOE
STANDARD OF QUALITY

25% OFF

Gold Toe®
men's socks

Dillard's
The Style of Your Life.

August 4 - September 7

093053 1
Process Cyan Process Magenta Process Yellow Process Black PANTONE 872 C

7/9/09 11:05 AM

209

EXHIBIT 16



The best socks on two feet.

GOLDTOE®



For Immediate Release

Contact: Kelly Durcan

212-253-4444

kdurcan@devitoverdi.com

GOLDTOE® STEPS INTO 80TH ANNIVERSARY

Iconic Brand Kicks Off 80 Years With Consumer Contests And New Line Extensions

CHARLESTON, SC (December 01, 2014) – For the past 80 years, presidents and painters, actors and athletes, teachers and technicians, and millions of others have started their day by slipping on a pair of Gold Toe® socks.

Born out of the Great Depression when a durable sock was most in demand, the iconic Gold Toe® sock celebrates its 80th anniversary this year as one of the country's most famous – and recognizable – hosiery brands. The venerable sock will celebrate its milestone this month with a number of promotions and contests surrounding its 80 years selling socks. It is also partnering with clothing charities on a donation program and introducing line extensions.

“Few American brands have stood the test of time as Gold Toe®. We’ve rolled with the whims of cultural and lifestyle changes, and adapted to the ever-evolving dictates of fashion – from three-piece suits and bell-bottoms to leisure suits and casual Fridays,” said Trish McHale, vice president of marketing for Gold Toe®. “It’s been a remarkable history, but we’ve made it clear that we don’t live in the past. Our styles, colors and innovation will continue to make us ‘The best socks on two feet™’ for the next 80 years.”

The Gold Toe® brand will be stepping into the footwear business by debuting its first branded line of slippers for men and women this month. The brand has already moved from making just socks to other dressing essentials for men, women and kids.

“Gold Toe® will forever be known as a great American sock, but that doesn’t preclude us from leveraging this proven reputation for style, comfort and durability to expand our portfolio to other apparel items befitting the brand,” said Ms. McHale. “We’re inspired to continue moving this great brand forward.”

And the “G®” collection of apparel and accessories is indicative of the Gold Toe® brand’s concerted effort to remain contemporary and fashion forward to a younger consumer. The “G®” collection offers fashion socks, underwear, T-shirts, active fleece, slippers, and other comfortable and trend-right goods.

Three German immigrants founded the Great American Knitting Mills in Pennsylvania in 1919. When a cousin of one founder’s wife later joined the company, he used his engineering background to develop the “linenized toe.” Irish linen proved to be significantly stronger than cotton, and more resistant to fraying and holes. In 1934, a department store executive mentioned to company executives that consumers were unable to distinguish the sock with the linenized toe from others. In response, Great American Knitting Mills began wrapping a gold thread of acetate around the linen to differentiate its sock from the competition. The Gold Toe® sock was born.

As the Gold Toe® brand grew in prestige and popularity, the socks became so desirable that the company decided that only one retailer per city would be permitted to sell the coveted line. Since its inception, Gold Toe® has always been a leading sock brand at department stores by offering an extremely diversified number of styles, up to 600 currently. A number of its famed styles that were introduced generations ago continue to be asked for by name, including the Fluffies®, Metropolitan, Canterbury and Bermuda.

To promote its anniversary, Gold Toe® is celebrating “80 Days of Gold Toe” via its social media platforms (Facebook, Twitter), where it will award weekly product giveaways and a grand prize of a \$1,500 wardrobe makeover at its conclusion. The “80 Days of Gold Toe” will highlight the brand over the years via vintage styles and old ads, as well as spotlight the exciting new styles and fashion tips for today’s Gold Toe® brand wearer.

The trademarked gold thread that is knit into the toe is a recognized symbol identifying the Gold Toe® brand as the “Standard of Quality®” and durability in hosiery. Initially a favorite of those looking for a long-lasting sock during the Great Depression, the Gold Toe® brand has continued to thrive over the past 80 years by continuously offering a quality product that is durable, comfortable and affordable – a formula that never goes out of style.

About Gold Toe

Today, the Gold Toe® brand is the number one brand of socks (men’s, women’s and kids’) in department stores and national chains for dress, casual and athletic combined. Gold Toe® Men’s underwear and casualwear collections can also be found in the same channels of distribution. In addition, there are more than 50 Gold Toe® retail stores currently in the country, with more stores opening this year. Gold Toe® is a brand owned by Gildan USA Inc., a leading supplier of quality branded basic family apparel, including T-shirts, fleece, sport shirts, socks and underwear, which sells its products under a diversified portfolio of brands, including the Gildan® and Anvil® brand family, as well as the recently acquired Secret®, Silk™ and Therapy Plus™ brands. Gildan also has license agreements for the Under Armour®, Mossy Oak® and New Balance® brands.





The best socks on two feet.

GOLDTOE®



SOCK STYLE

Until recently, men's socks were limited to black, navy or white. Today, a stroll down the hosiery aisle reveals bold designs and countless colors. The once basic sock is now the ideal accessory for imparting flair, color or personality to a wardrobe.

"The sock has replaced the tie as the canvas for sartorial self-expression," said Trish McHale, head of marketing for Gold Toe Socks. "Socks are fashion statements and more men are putting an exclamation point to that fact."

Since 1934, Gold Toe has adapted to fashion's fickle nature. Today, its "G" collection is the brand's answer to the needs of a younger and more fashion-forward consumer.

"This year, we're seeing more modern and abstract geometrics – and a lot more color," said Matthew Mull, sock designer. "But the desire to be different can lead to creative trend-setting style – and to fashion mis-steps."

Here are a few tips to blend bold and brash socks into your wardrobe:

- Socks should be a reflection of your personality, not a wild exaggeration
- Step into style slowly if you're unsure. Start with updated classic patterns like rich plaids, herringbones and geometrics.
- The style or weight of your socks should complement your shoes. Heavier socks are more casual; thinner socks are more upscale and dressy.
- There are no rules for matching socks, but the most stylish men match them to their pants.
- The key is to be savvy and dress for the occasion. Stick with the brand you trust.

“The traditional dress sock will always be essential, but brighter and more creative styles certainly have made socks the perfect accessory that they have become,” said Mull.

The Gold Toe brand has continued to thrive these past 80 years by combining durability and comfort with fashion. To learn more about sock style, visit www.facebook.com/goldtoe.



EXHIBIT 17

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD’S, INC.,

Defendant.

Case No. 3:14-cv-00590

DECLARATION OF CECILIA M. SIDEBOTTOM

I, Cecilia M. Sidebottom, declare:

1. I am a paralegal in the Intellectual Property Practice Group of the law firm of Shumaker, Loop & Kendrick, LLP, attorneys for Dillard’s, Inc. (“Dillard’s”) in this action. I am over the age of 18 and have personal knowledge of the matters set out in this Declaration, except where otherwise indicated, and if called to testify I could and would competently testify to them.
2. Exhibit 1 is a true copy of the Declaration of Michael Shields.
3. Exhibit 2 is a true copy of the Declaration of Kelly McElyea.
4. Exhibit 3 is an exhibit prepared to illustrate various iterations of packaging labels used by Gildan on its hosiery products.
5. Exhibit 4 is a collection of third party hosiery products, including packaging illustrations obtained by me by shopping internet buying sites such as Amazon and eBay, as well as purchases made in stores.
6. Exhibit 5 is a true copy of U.S. Trademark Registration No. 4,546,796 for GOLDTOE and Design.
7. Exhibit 6 is a Comparison of Gildan trade dress definitions.

8. Exhibit 7 illustrates Gildan and Dillard's packaging.
9. Exhibit 8 is a screenshot from a Gildan website illustrating the manner in which GOLDTOE socks are advertised on Gildan's website.
10. Exhibit 9 is a collection of Dillard's GOLD LABEL packages and labels for Dillard's products other than hosiery.
11. Exhibit 10 is a true copy of a Cease and Desist Letter forwarded by Gildan to Dillard's bearing Gildan production Nos. GT00029 – GT00036.
12. Exhibit 11 is a true copy of a letter from Dillard's counsel to Gildan's counsel in response to the letter of Exhibit 10, bearing Gildan production Nos. GT00026 – GT00028.
13. Exhibit 12 is a table of Gildan's GOLDTOE trademark registrations collected from the website of the United States Patent and Trademark Office.
14. Exhibit 13 contains true copies of Gildan's GOLDTOE Design Registration Nos. 308,608 and 2,056,422.
15. Exhibit 14 contains true copies of documents bearing Gildan production Nos. GT00009 and GT00015 showing Gold Toe and Gold Label comparisons.
16. Exhibit 15 is a true copy of images showing GOLDTOE socks having a gold toe, including Gildan advertising.
17. Exhibit 16 is a true copy of a Gildan Press Release bearing Gildan production Nos. GT00102 – GT00106.
18. Exhibit 17 is this Declaration of Cecilia M. Sidebottom.
19. Exhibit 18 is a true copy of Gildan's responses to Dillard's requests for production of documents.
20. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of February, 2015.



Cecilia M. Sidebottom

EXHIBIT 18

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-cv-00590

**PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST
SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Gildan USA Inc. ("Plaintiff" or "Gildan") hereby responds to Defendant's first set of requests for production ("Request" and/or "Requests") as follows:

PRELIMINARY STATEMENT

1. Gildan's responses to the Requests are based upon its present knowledge, information and belief. Gildan has not completed its investigation and discovery of the facts related to this lawsuit. Further discovery, independent investigation, legal research and analysis may supply additional facts and/or add meaning to known facts. Without acknowledging any obligation to do so, except as required by law, Gildan reserves the right to amend, supplement, correct, or clarify its responses to the Requests when and if new or additional information becomes available.

2. Gildan reserves the right to object to the use and/or admissibility of any of its responses or documents produced in response to the Requests at the trial of this action, at any other proceeding, or in any other action or proceeding.

3. Nothing contained in these responses should be construed as an admission relative to the existence or non-existence of any fact, and no response is to be considered an admission respecting the relevance or admissibility of any information contained therein.

4. The following responses are submitted without prejudice to Gildan's right to produce evidence of any subsequently discovered fact or facts which Gildan may later recall or discover. The responses contained herein are made in a good faith effort to supply as much factual information as is presently known, but in no way prejudice Gildan's ability to engage in further discovery, research or analysis.

5. Gildan incorporates by reference this Preliminary Statement and the following General Objections in each and every response set forth below.

- **GENERAL OBJECTIONS**

A. Gildan objects to the Requests propounded by Defendant ("Dillard's") to the extent they seek information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence with respect to the issues in this action.

B. Gildan objects to the Requests as burdensome and as designed, in whole or in part, to harass it rather than to serve any legitimate discovery purpose.

C. Gildan objects to the Requests as overbroad and not limited to a reasonable time period.

D. Gildan objects to the Requests to the extent they seek information of a commercially sensitive nature. Revealing such information would substantially and irreparably injure Gildan by revealing information which derives independent economic

value from not being generally known or which has been acquired primarily through confidential research and development efforts by or on behalf of Gildan.

E. Gildan objects to the Requests to the extent they seek privileged information protected by the attorney-client privilege or the attorney work-product doctrine. Such privileged information includes, but is not limited to, the following:

1. Information which constitutes, reflects, refers to or relates to confidential communications between officers, directors or employees of Gildan and counsel; and

2. Information which constitutes, reflects, refers to or relates to the impressions, conclusions, opinions or mental process of counsel, their agents or employees.

F. Gildan objects to the Requests to the extent they seek information relating to employees or customers of Gildan, the disclosure of which would invade their right to privacy.

G. Gildan objects to the Requests to the extent they seek information which is equally or more accessible to Dillard's and which is maintained primarily by persons or entities other than Gildan.

H. Gildan objects to any requirement that it identify or provide a list of any documents withheld from discovery pursuant to either the attorney-client communications privilege and/or the attorney work product immunity doctrine and which documents were created on or after October 22, 2014, the date on which this lawsuit was filed. Such a requirement would be unduly burdensome and would interfere with this lawsuit by deterring the creation of such documents.

I. In responding to the Requests, Gildan is mindful of, and Gildan applies, the particular meanings which Dillard's dictated in its *Definitions*. Accordingly:

- (i) the term "Gildan," as defined by Dillard's, means only the nominative plaintiff, Gildan USA Inc., and the term "Plaintiff," as defined by Dillard's, "means [not only] Gildan USA Inc. ("Gildan") [but also] any parents, subsidiaries, divisions, affiliates...[etc.] of Gildan USA Inc." (*Definitions*, ¶ B).
- (ii) The term "Gildan Footwear," as defined by Dillard's, means certain articles of manufacture, namely, "socks, knitted slippers and other hosiery items sold or offered for sale by Gildan [i.e., by Gildan USA Inc. vis-a-vis its affiliates and predecessors] since January 1, 2008" (*Definitions*, ¶ I).
- (iii) The term "Accused Product," as defined by Dillard's, means "any footwear [vis-a-vis any packaging material] which Gildan contends in this litigation infringes any trade dress right asserted by Gildan" (*Definitions*, ¶ J).

J. Gildan objects to these requests to the extent (if any) that they pertain, or were intended to pertain, to the activities, products or product packaging of Doris Inc., a Canadian hosiery marketer acquired in 2014 by Gildan Activewear Inc., on the grounds that information and documents relating to that company's operations are neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit.

Accordingly, any otherwise responsive documents relating to that entity will not be produced.

RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 1:

All correspondence to or from Gildan and relating to any claim of ownership in, or intellectual property or infringement relating to the Gildan Footwear.

RESPONSE TO REQUEST NO. 1:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of correspondence relating to ownership in, or intellectual property or infringement relating to, socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

Nevertheless, subject to and without waiver of the foregoing objections and its general objections, Gildan, in a good faith effort to advance meaningful discovery, further responds that Gildan USA Inc., as presently informed, believes that, other than its correspondence with Dillard's, it has no correspondence to or from itself relating to any claim of ownership in, or intellectual property or infringement relating to, the allegedly infringed packaging from which its claims in this lawsuit arise.

REQUEST NO. 2:

All advertising and promotional copy, press releases, and the like including text, graphics or a combination of the two and relating or referring to the Gildan Footwear.

RESPONSE TO REQUEST NO. 2:

Gildan objects to this Request on the grounds that this Request, to the extent it requires the production of “all” such advertisements and other requested materials relating or referring to the socks and other hosiery products of Gildan USA Inc. since January 1, 2008, is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce representative samples of the advertising and promotional copy, press releases, and the like, including text, graphics or a combination of the two, published on or after January 1, 2008, to the extent such materials: (i) are in its possession, custody or control and are located upon a reasonable investigation; and (ii) relate or refer to the socks and other hosiery goods sold or offered for sale by Gildan USA Inc.

REQUEST NO. 3:

All packaging in which the Gildan Footwear has ever been packaged for display and sale since January 1, 2008.

RESPONSE TO REQUEST NO. 3:

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce specimens or images of all packaging in which socks and other hosiery goods of Gildan USA Inc. have been packaged for display and sale since January 1, 2008, to the extent such materials are in its possession, custody or control and are located upon a reasonable investigation.

REQUEST NO. 4:

All written, graphical or printed descriptions of the Gildan Footwear since January 1, 2008.

RESPONSE TO REQUEST NO. 4:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of written, graphical or printed descriptions of its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 5:

All patent, trademark, copyright or other intellectual property applications describing, disclosing or claiming any aspect of the Gildan Footwear.

RESPONSE TO REQUEST NO. 5:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of patent, trademark, copyright or other intellectual property applications describing any aspect of its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the

terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 6:

All descriptions, drawings, explanations and diagrams of the Gildan Footwear from Gildan or anyone on its behalf to the manufacturer of the Gildan Footwear.

RESPONSE TO REQUEST NO. 6:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of descriptions, drawings, explanations and diagrams of its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 7:

All tangible embodiments of any sales presentation, exhibit or display regarding the Gildan Footwear, including any PowerPoint or similar video or graphical presentations.

RESPONSE TO REQUEST NO. 7:

Gildan objects to this Request, to the extent it requires the production of "all" sales presentations, exhibits or displays regarding the socks and other hosiery products of Gildan USA Inc. since January 1, 2008, on the grounds that this Request is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce those sales presentations, exhibits and displays regarding the socks and hosiery products of Gildan USA Inc. used since January 1, 2008, to the extent such materials: (i) are in its possession, custody or control and are located upon a reasonable investigation; and (ii) depict, relate or refer to the packaging for its socks and other hosiery goods.

REQUEST NO. 8:

All documents referring or relating to any function performed by the Gildan Footwear or any component part thereof.

RESPONSE TO REQUEST NO. 8:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents relating or referring to any function performed by its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 9:

All documents and things relating to any rollout, point-of-sale consumer blitz, signage, packaging, in-store events, point-of-purchase or other marketing materials relating to the Gildan Footwear.

RESPONSE TO REQUEST NO. 9:

Gildan objects to this Request, to the extent it requires the production of “all” such marketing materials relating or referring to the socks and other hosiery products of Gildan USA Inc. since January 1, 2008, on the grounds that this Request is overly broad and unduly burdensome.

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce representative samples of such “roll-out, point-of-sale consumer blitz, signage, packaging, in-store events, point-of-purchase [and] other marketing materials” used by it on or after January 1, 2008, to the extent such materials: (i) are in its possession, custody or control and are located upon a reasonable investigation; and (ii) relate or refer to the socks and other hosiery goods sold or offered for sale by Gildan USA Inc.

REQUEST NO. 10:

All documents and things referring or relating to the structure, construction, function, design specifications, conception, development, modification, alteration or revision to the construction or design of any Gildan Footwear.

RESPONSE TO REQUEST NO. 10:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of documents and things referring or relating to the structure, construction, function, design specifications, conception, development, modification, alteration or revision to the construction or design of any of its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any

issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 11:

All documents relating to a consumer need for features of the Gildan Footwear.

RESPONSE TO REQUEST NO. 11:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents relating to a consumer need for features of its socks, knitted slippers and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 12:

All documents relating to Gildan's in-house research relating to the Gildan Footwear, including any results of surveys, interviews or focus groups relating to the Gildan Footwear, or any samples, prototypes, or earlier footwear products from which the Gildan Footwear may have been derived.

RESPONSE TO REQUEST NO. 12:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents relating to its in-house research relating to its socks and other hosiery goods (vis-a-vis the *packaging* for such hosiery goods), this Request seeks

documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 13:

All documents, including correspondence, relating or referring to Dillard's and also referring in any manner to the Gildan Footwear.

RESPONSE TO REQUEST NO. 13:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of such documents as its correspondence with Dillard's and all purchase orders, invoices and shipping documents pertaining to socks purchased by Dillard's from Gildan USA Inc. at any time since January 1, 2008, this Request is overly broad and unduly burdensome, and Dillard's should have those materials in its possession, custody, and control.

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce such correspondence on or after January 1, 2008, to or from third-parties and relating or referring to Dillard's and also referring to the socks and other hosiery goods of Gildan USA Inc., to the extent such materials are in its possession, custody or control and are located upon a reasonable investigation. However, Gildan, as presently informed, believes that it has no such documents in its possession, custody or control.

Otherwise, Gildan objects to this request on the grounds that it is overly broad, unduly burdensome, and seeks documents neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit.

REQUEST NO. 14:

All documents referring or relating to any agreement between Gildan and any other person relating to the licensing, purchase or sale of any intellectual property rights in any footwear product, including but not limited to Gildan Footwear.

RESPONSE TO REQUEST NO. 14:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents referring or relating to any agreement that relates to the licensing, purchase or sale of any intellectual property rights in any footwear product (vis-a-vis the *packaging* for such footwear products), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 15:

All documents referring or relating to any settlement of any dispute between Gildan and any other person relating to any intellectual property rights in any footwear products, including but not limited to Gildan Footwear, without regard to whether the claimed intellectual property rights were alleged to be owned by Gildan or such person.

RESPONSE TO REQUEST NO. 15:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents referring or relating to any settlement of any dispute that

relates to any intellectual property rights in any footwear product (vis-a-vis the *packaging* for such footwear products), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 16:

All documents referring or relating to any litigation or any threatened litigation between Gildan and any other person relating to any intellectual property rights in any footwear product, including but not limited to Gildan Footwear, without regard to whether the claim intellectual property rights were alleged to be owned by Gildan or such person, including correspondence between Gildan and such person, or between Gildan's attorneys and such person or attorneys for such person.

RESPONSE TO REQUEST NO. 16:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of all documents and things referring or relating to any litigation or any threatened litigation that relates to any intellectual property rights in any footwear product (vis-a-vis the *packaging* for such footwear products), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 17:

All reports and opinions, including but not limited to expert reports relating to alleged similarity between any Gildan Footwear product and any footwear product of any other person.

RESPONSE TO REQUEST NO. 17:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of expert reports and all other reports and opinions that relate to any alleged similarity between any of Gildan's socks and other hosiery goods, on the one hand, and, on the other hand, any other person's footwear product (vis-a-vis the *packaging* used by such other persons for their hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 18:

All reports and opinions, including but not limited to expert reports relating to any profits, damages or other claimed recovery in any action between Gildan and any other person and relating to either a Gildan Footwear product or any footwear product of any such person.

RESPONSE TO REQUEST NO. 18:

Subject to and without waiving the foregoing objections and its general objections, Gildan will produce copies of all reports and opinions issued since January 1, 2008, which reports and opinions relate to any profits, damages or other claimed recovery in any action in which it was a party, to the extent such reports and opinions: (i) relate to one of its footwear products or the footwear product of another party to the action; and

(ii) are in its possession, custody or control and are located upon a reasonable investigation. However, Gildan, as presently informed, believes that there are no such materials in its possession, custody or control.

REQUEST NO. 19:

All documents comprising written, graphical or image archives of footwear designs wherein the footwear designs include any design feature relating to any functional or ornamental feature of the Gildan Footwear.

RESPONSE TO REQUEST NO. 19:

Gildan objects to this Request on the grounds that, inasmuch as it seeks the production of certain written, graphical and image archives of certain footwear designs (vis-a-vis the *packaging* for footwear incorporating those footwear designs), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

REQUEST NO. 20:

A sample of each variation of Gildan Footwear, including design and fabric pattern variations, variations sold under a single model number, made, sold or imported by Gildan since January 1, 2008, including packaging, manuals, warranties and any other documents.

RESPONSE TO REQUEST NO. 20:

Gildan objects to this Request on the grounds that, to the extent that it seeks the production of samples of footwear products, and the manuals, warranties, and other documents pertaining to those footwear products, this Request seeks documents and

information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

To the extent that this Request seeks the production of samples of packaging for such footwear products, Gildan objects to this request on the ground that it is duplicative of Request No. 3. Accordingly, Gildan incorporates by reference its response to Request No. 3.

REQUEST NO. 21:

All documents and things relating to any and all factual allegations contained in Gildan's Complaint, including but not limited to:

- (a) Gildan's development, ownership, sales and promotion of Gildan Footwear;
- (b) Gildan's communications with Dillard's, including communications regarding the Gildan Footwear and the Accused Dillard's Products;
- (c) Evidence of any secondary meaning acquired by the Gildan Footwear;
- (d) Evidence of any irreparable harm sustained by Gildan and alleged to have arisen out of the sale by Dillard's of the Accused Dillard's Products;
- (e) Evidence of market value of any design, feature, brand or other aspect of the Gildan Footwear; and
- (f) Evidence of any damage, including amount and extent, suffered by Gildan as a result of any action or inaction on the part of Defendant.

RESPONSE TO REQUEST NO. 21:

Gildan objects to this Request to the extent it seeks, via its preamble, the production of "[a]ll documents and things relating to any and all factual allegations

contained in Gildan's Complaint," on the grounds that the request fails to satisfy the requirement of Rule 34(b)(1) that it specify each item or category of requested documents "with reasonable particularity."

Gildan objects to subpart (a) of this Request on the grounds that, inasmuch as it seeks the production of documents relating to the factual allegations in Gildan's Complaint pertaining to its development and ownership of footwear products, there are no such allegations. Accordingly, this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit.

Gildan also objects to subpart (a) of this Request to the extent that it seeks "all" documents and things relating to any and all factual allegations contained in Gildan's Complaint pertaining to its sales and promotion of any and all footwear products, on the grounds that: (i) the Request is overly broad, unduly burdensome; and (ii) to the extent that it pertains only to the sales and promotion of footwear products in the allegedly infringed packaging, not only overly broad and unduly burdensome, but also duplicative of previous requests.

Gildan objects to subpart (b) of this Request on the grounds that, inasmuch as it seeks the production of all of Gildan's communications with Dillard's, this Request is overly broad and unduly burdensome.

For the same reason, Gildan also objects to subpart (b) of this Request to the extent that it seeks all communications with Dillard's regarding the footwear products of Gildan USA Inc. (i.e., "the Gildan Footwear"). Still further, Gildan objects to subpart (b) of this Request to the extent that it seeks all communications with Dillard's regarding

Gildan's footwear products and the "Alleged Dillard's Products" on the grounds that: (i) such documents are already in the possession of Dillard's; and (ii) the Request is duplicative of previous requests.

Gildan objects to subpart (c) of this Request, which seeks all documents and things relating to, or comprising, "[e]vidence of any secondary meaning acquired by the [\"socks, knitted slippers and other hosiery\" products of Gildan USA Inc.]" (vis-a-vis the *packaging* for such hosiery goods) on the grounds that, because Gildan does not claim any secondary meaning in the hosiery goods themselves (vis-a-vis the *packaging* for such goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard's to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

Gildan objects to subpart (d) of this Request, which seeks all documents and things comprising evidence of "any irreparable harm sustained by Gildan and alleged to have arisen out of the sale by Dillard's of the Accused Dillard's Products," because such request is vague and ambiguous and, as presently understood, overly broad and unduly burdensome. In any event, as the courts have held repeatedly, such irreparable harm arises from such facts as: the trade dress owner's loss of control over the manner in which its image, and the public's perception of its products, are presented to the public.

Gildan objects to subpart (e) of this Request on the grounds that, inasmuch as it seeks the production of evidence of the market value of the design, feature, brand or other

aspect of its footwear products themselves (*i.e.*, the “Gildan Footwear”) (vis-a-vis the *packaging* for such hosiery goods), this Request seeks documents and information neither relevant to any issue to be decided in this lawsuit nor reasonably calculated to lead to the discovery of admissible evidence relevant to any issue to be decided in this lawsuit. Accordingly, an application of the *Definitions* explicitly specified by Dillard’s to the terms used in this Request leads to the conclusion that this Request exceeds the bounds of discovery permitted under Rule 26(b)(1), F.R.Civ.P.

Gildan objects to subpart (f) of this Request on the grounds that it is, *inter alia*, premature, as the amount of any actual damages due Gildan under its claims (including, without limitation, its lost profits or, as a substitute therefor, Dillard’s ill-gotten profits) cannot yet be determined.

Respectfully submitted,



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Counsel for Plaintiff Gildan USA Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of January 2015, a true and correct copy of the foregoing document was served by U.S. first class mail, postage prepaid, addressed to the following attorneys for Defendant:

W. Thad Adams, III
Samuel A. Long, Jr.
Shumaker, Loop & Kendrick, LLP
First Citizens Bank Plaza
128 South Tryon Street
Charlotte, NC 28202



EXHIBIT 19

**(PHYSICAL EXEMPLARS SUBMITTED
TO COURT)**

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

GILDAN USA INC.,

Plaintiff,

vs.

DILLARD'S, INC.,

Defendant.

DOCKET NO. 3:14-CV-590

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE MAX O. COGBURN, JR.
UNITED STATES DISTRICT COURT JUDGE
WEDNESDAY, MARCH 11, 2015 AT 9:30 A.M.

JILLIAN M. TURNER, RMR, CRR, CLR
Official Court Reporter
United States District Court
Charlotte, North Carolina

1 APPEARANCES:

2 On Behalf of the Plaintiff:

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10 Atlanta, Georgia 30309

11 On Behalf of the Defendant:

12 W. THAD ADAMS III, ESQ.
13 S. ALEXANDER LONG, ESQ.
14 Shumaker, Loop & Kendrick, LLP
15 128 South Tryon Street, Suite 1800
16 Charlotte, North Carolina 28202

1 (Wednesday, March 11, 2015 at 9:30 a.m.)

2 **P R O C E E D I N G S**

3 THE COURT: Good morning.

4 THE COURTROOM AUDIENCE: Good morning, Your Honor.

5 THE COURT: Well, it looks like we're here about
6 some socks. Let's hear from everyone about this. I think
7 somebody filed a preliminary injunction. Fire away.

8 MR. JONES: Your Honor, may I first introduce the
9 representatives of the plaintiff, please?

10 THE COURT: Yes, sir.

11 MR. JONES: Maria Reit, Patricia McHale and
12 Andrew Colvin.

13 MR. COLVIN: Good morning, Your Honor.

14 THE COURT: Good morning.

15 MR. JONES: I'm Larry Jones, and this is my
16 associate Sam Gunn.

17 THE COURT: Glad to have you here.

18 MR. JONES: Do you mind if I stand? Because I'm
19 going to be moving back and forth.

20 THE COURT: You can do whatever you want to. I
21 was -- throughout my career, I was a trial attorney who
22 participated in the courtroom, and it's hard enough to do
23 things in the courtroom and then to try to adjust your style
24 to whatever the judge thinks the style ought to be. So any
25 style that works for you, works for me.

1 MR. JONES: Okay. Thank you, Your Honor.

2 THE COURT: Yes, sir.

3 MR. JONES: Before we get into an analysis of the
4 legal issues that are involved in this motion for preliminary
5 injunction, I'd like to take a few minutes, first of all, to
6 tell the story from which those legal issues have arisen, a
7 story that in the last few weeks has been told for the most
8 part from the mouths of Dillard's own employees during their
9 recent depositions.

10 The story begins just a few years ago. GOLDTOE, it
11 was then GOLDTOE Moretz, you may recall, based in Newton,
12 North Carolina. It was then, as now, a premier brand for
13 socks. Perhaps the best known brand for socks in this
14 country. Its GOLDTOE brand men's socks were market leaders,
15 and GOLDTOE men's socks were looked for and bought by
16 consumers in leading department stores all across this
17 country, including Dillard's since 1988, and in other men's
18 furnishings, retailers. And particularly the high-end
19 retailers.

20 Mr. Shields, who is present today, testified that
21 the GOLDTOE brand in Dillard's, quote, "has done very well
22 over the years," end quote. And, in fact, has been the
23 leading brand of socks sold in Dillard's in the years that he
24 has been there.

25 Now, Dillard's employees tell us that this story

1 began and starts unfolding when GOLDTOE did something that
2 set in motion the process that has led us here today.

3 What did GOLDTOE do? GOLDTOE started selling its
4 socks in stores such as JC Penney and Kohl's, stores,
5 retailers that Dillard's perceived to be of a lower tier in
6 the retail food chain, so to speak. This, as we're told, was
7 something of a big deal to some of the folks at Dillard's,
8 including some of their management. Particularly in the
9 men's furnishings area. They flatout didn't like that.

10 We've been told that in the face of this, this change in
11 marketing of GOLDTOE socks into lower tiered chains. We've
12 been told that in the face of this, Dillard's decided that it
13 would buy less GOLDTOE product going forward, and Dillard's
14 began various efforts to get its customers to buy its own
15 house brand of men's socks instead of GOLDTOE brand socks.

16 In fact, we know from at least one internal e-mail
17 that GOLDTOE employees -- this is PX-20 -- GOLDTOE employees
18 were reminded that, quote, "We continue to downplay this
19 brand as they are carried in JC Penney and Kohl's." That's
20 what they were doing. That's what they were doing. That's
21 why they were doing it. That's not the only e-mail.

22 Another one, PX-21, and referring to the way in
23 which the GOLDTOE and the Dillard's house brand socks would
24 be displayed in the stores, talked about continuing to
25 minimize physically the appearance, the quantities, or

1 whatever of the GOLDTOE socks vis-a-vis the house label
2 socks.

3 In fact, Mr. Shields testified in his deposition
4 that Dillard's is still trying to minimize GOLDTOE sales.
5 Relatedly, Mr. Shields also testified that Dillard's redesign
6 of its men's sports socks packaging, which brings us to the
7 courtroom today, was part of its efforts to increase the
8 sales of its own house brand socks while decreasing the sales
9 of GOLDTOE socks.

10 As we have indicated in our moving papers,
11 Dillard's did some other things, too, to try to gain sales
12 for its own house brand. Particularly at the expense of
13 GOLDTOE. For instance, it mimicked some of the style names
14 that identified GOLDTOE's individual styles. It used the
15 style name "Canter" to mimic GOLDTOE's Canterbury. It used
16 the style name "Metro" to mimic GOLDTOE's style name
17 Metropolitan.

18 Meanwhile, while this was evolving, what GOLDTOE
19 was using -- excuse me. What Dillard's was using as a label
20 for its men's athletic socks, also known as men's sports
21 socks, was this label here, which I think is part of
22 Plaintiff's Exhibit Number 15. They've been using this for a
23 few years for its house brand. It was basically a black
24 band. The designation GOLD LABEL was not on the band. The
25 background color of the band were not blue. There was no

1 rectangular box on the upper right front or anywhere else on
2 the panel of the socks or the packaging, and there were no
3 gold panels on the side. So that's what they came into the
4 project with.

5 Now, during this time GOLDTOE decided to refresh
6 its packaging, at least its packaging for its men's and
7 women's socks, leaving children's socks. And what GOLDTOE
8 did was they enlisted an outside design firm in 2010 and
9 continuing into 2011, and that firm with GOLDTOE together
10 collaborated, and they came up with a series of bands to be
11 used across all of the men's and women's GOLDTOE socks.

12 Now, for the athletic socks, the counterpart to the
13 product of Dillard's at issue, they used primarily PX-4 with
14 this blue band. There was an exception for some athletic
15 socks that are sold to Macy's primarily. I think Bon-Ton may
16 be another customer. But you will see -- and we'll talk
17 about the individual constituent elements of the trade
18 dress -- but you will see -- I'll leave these up here -- when
19 we talk about the elements of the trade dress, you will see
20 there are a certain set of core element that is depicted in
21 each and every one of those eight different iterations of the
22 new line of packaging that was developed and released in
23 about 2011.

24 In turn, two years later or a year and a half
25 later, Dillard's decided to refresh its packaging. Remember,

1 it was using this black band here (indicating), at least for
2 the men's athletic socks. And that's all we know about, and
3 that's all we are addressing in this hearing and with this
4 motion.

5 So they decided to -- excuse me -- refresh that
6 band, and what they did was they have an internal design
7 team. Kelly McElyea is a graphic artist. We deposed him.
8 His job is to design labels and packaging for Dillard's house
9 brand apparel, men's furnishings, and perhaps other products.

10 Anyway, he was given the task. And there was a
11 meeting one day. I think it was in February 2013. He was
12 given the task of coming up with a new design to replace what
13 you see there. And according to his testimony, there was
14 this meeting; and when he left the meeting, he took back to
15 his workstation a package of GOLDTOE socks, men's athletic
16 socks. I asked him why. His answer, quote, "Management
17 liked certain aspects of it and wanted us to consider looking
18 at it."

19 So Mr. Kelly -- excuse me. Mr. McElyea does his
20 job and he sits down, and based upon his own ideas
21 apparently, or at least somewhat, he comes up with a first
22 iteration of new designs. And these (indicating) represent
23 what he came up with in his first iteration. And then that
24 got rejected. So he then came up with a second iteration.

25 So that (indicating) is the second iteration. And

1 you'll see that what Mr. McElyea came up with, after some
2 feedback even from management, was not a blue band. It
3 didn't have a blue band. Had no rectangular box in the upper
4 right corner front panel and still didn't look like the
5 GOLDTOE packaging.

6 But Dillard's management kept rejecting what
7 Mr. McElyea kept proposing. And finally, eventually
8 Mr. McElyea testifies, quote, "They instructed me" -- they
9 instructed me -- "to use this blue." And lo and behold we
10 have the first iteration of designs following management's
11 instruction to use not a dark blue, not a light blue, use
12 this blue. Verbatim what he said. And move the elements
13 around.

14 So complying with those instructions, this
15 (indicating) is what he came up with. And you will see that
16 following those instructions, he now has a blue band. He's
17 now put the house brand GOLD LABEL in the center here in
18 white lettering. He now adds lo and behold a rectangular box
19 on the front, and it even has a serrated bottom edge. And
20 you can't see I'm sure from the bench but --

21 THE COURT: I've got them here.

22 MR. JONES: Okay.

23 THE COURT: I've got this pair right here.

24 MR. JONES: There is used on some occasions by
25 GOLDTOE a serrated bottom edge.

1 Now, considering this combination, Mr. Shields
2 testified that he could not recall -- and he's been with
3 Dillard's for a while -- he could not recall Dillard's ever
4 previously using a rectangular box with a serrated lower edge
5 on any, any packaging material.

6 I'd note also, Your Honor, that after receiving
7 this more definitive mandate from management, now we have
8 what will be gold side panels incorporated into the design.
9 And you'll also notice, Your Honor, on some of the iterations
10 that he came up with he even includes -- and it's a little
11 difficult to see -- this dark shadowy image of a runner on
12 the left-hand side of the front with the packaging.

13 Now, we have not deposed a certain employee. His
14 name is Mr. Huffman. He's referred to in some of the
15 internal e-mails as "the boss." We suspect that the mandate
16 was coming from Mr. Huffman. He's no longer an employee.
17 We'll have to get to him after the state of the trial. But I
18 asked Mr. McElyea, "Did Mr. Huffman in his meetings with him
19 show or refer you to the GOLDTOE packaging?" Mr. McElyea
20 testified, "He may have mentioned it."

21 Well, anyway, so now they have pretty much decided
22 what they're going to do, and with a few tweaks you have the
23 next iteration derived from the mandate of management. This
24 (indicating) is the iteration that was approved by
25 Michael McNiff, and that's what they so-called went to the

1 press with.

2 Now, they wound up basically taking all of those
3 elements that I talked about here on this immediately prior
4 iterations, except the image of a runner. To their credit,
5 they do not incorporate the image of the runner that appears
6 on some of the GOLDTOE socks packaging.

7 The result of this series of iterations was, as
8 Mr. McElyea testified, the new Dillard's packaging has,
9 quote, "that look," end quote, that the GOLDTOE packaging
10 has. That's from the McElyea deposition, page 88, line 17;
11 89, line 1. It has that look. It no longer has the look of
12 the former packaging. It does not even have anything that
13 remotely reassembles what Dillard's uses for its men's dress
14 socks vis-a-vis its athletic socks. This is what they were
15 using (indicating), and I think maybe are still using for
16 their dress socks.

17 So when they wanted to change the look of their
18 packaging for their athletic socks, they didn't go with what
19 they had. They didn't go with something else they were using
20 for other socks. They went with this (indicating), and you
21 can see in comparison with the GOLDTOE.

22 Now, as a result of this, and not surprisingly,
23 Mr. McElyea admitted that there were instances internally at
24 Dillard's in which Dillard's own employees commented on the
25 fact that Dillard's packaging had, quote, "some of the same

features," end quote, as GOLDTOE's packaging. That's McElyea deposition page 89, line 2; page 90, line 1.

Now, Mr. Shields, in response to these similarities, he testifies, page 36 I think of his depo, "When we signed off on the" -- let me -- "When Dillard's decided to redesign its ROUNDTREE and YORKE's sports sock label to match the other sock packaging, isn't it true that Dillard's failed miserably to match its other sock packaging?" He testified, "That was a goal. We want to match our other socks' packaging." He says, "I wouldn't say we failed. There's a lot of features in our sports socks that match the features in the dress socks."

He says, Your Honor, there are a lot of features in common between the dress socks packaging that Dillard's uses and the athletic socks packaging. And I said, "As shown in Exhibit 18?" Mr. McElyea -- excuse me. Mr. Shields, "Yes."

"Question: That's your story. You're sticking to it?

"Answer: Yes. I see some similarities."

So that's their story. As a consequence, we don't agree. We think there are a lot of similarities between their new packaging and our packaging, a lot more similarities than between their new packaging and their old packaging or their new packaging and anybody else's packaging.

1 In any event, the process is completed. Dillard's
2 launches its socks 2014, spring I think it was. A Gildan
3 employee happens to see the new packaging in a Dillard's
4 store. There's some correspondence between the parties. The
5 lawsuit is launched, and now that brings us to the legal
6 issues.

7 In laymen's terms, Your Honor, there are three
8 questions, issues to be answered here. The first one, does
9 Gildan have trade dress rights in the packaging for its men's
10 and women's socks, including its men's athletic socks? Or at
11 least at this stage of the lawsuit, is there a sufficient
12 likelihood that such rights exist? That's question
13 number one.

14 Question number two, is Dillard's men's athletic
15 socks packaging likely to cause consumers to believe that
16 there is some form of commercial relationship between the
17 Dillard's socks and either the GOLDTOE socks or their
18 producer? Or at least at this stage of the lawsuit, is there
19 a sufficient likelihood that such a belief occurs?

20 And then the third question concerns whether the
21 other requisites for a preliminary injunction are satisfied
22 by the record before the Court?

23 The first question, do we have any rights? The law
24 is quite clear a trade dress claimant is free to define the
25 particular combination of elements for which it claims trade

1 dress protection.

2 It is not necessary under the law to incorporate in
3 your articulation of your trade dress every feature of the
4 product or packaging. When you have a trade dress claim in a
5 line of packaging, as we have here, the individual packages
6 in the line need not be identical so long as there is some
7 consistent overall look to the appearance of that line of
8 packaging or that line of products, depending upon the case.

9 Now, there is a commonality, a common core of
10 elements across the several iterations, and we've articulated
11 them as our trade dress. A color band with contrasting white
12 or gold lettering for the word mark; and the word mark has
13 two components, the first of which is "GOLD," a rectangular
14 box in the upper right-hand corner and the gold side panels.
15 That we articulate we claim as our trade dress.

16 Now, do we have rights? The trade dress
17 combination is protectable if it is distinctive and
18 non-functional. It is distinctive, Your Honor, in our case
19 because it is not a common combination of elements and it is
20 sufficiently different from third parties' packaging to set
21 it apart visually.

22 The issue is whether the trade dress as a whole is
23 distinctive. The issue is not whether each individual
24 constituent element is distinctive. It's not defeated by the
25 appearance of a colored band or the appearance of white

1 lettering for the brand or the appearance of a rectangular
2 box or the appearance of "GOLD" on the panels or elsewhere on
3 the packaging because this combination comprises the trade
4 dress, no single element. So that's the body of graphic
5 features for which the claim of trade dress, and we contend,
6 Your Honor, that it is distinctive and there has been no
7 evidence that seriously rebuts that.

8 The second thing you have to prove to demonstrate
9 that you have a trade dress is that you have to show that it
10 is non-functional. There are two types of functionality
11 under trademark law. There's *de facto* functionality.
12 There's *de jour* functionality.

13 What you must show as a trade dress claimant is
14 that your claim trade dress is not *de jour* functional. Our
15 claim trade dress, our bands, are *de facto* functional. They
16 serve a purpose. They hold a package of socks together in a
17 way that allows consumers to see the socks, touch the socks,
18 whatever. But they have a purpose; they serve a purpose.
19 But that's not the question. The question is, is there *de*
20 *jour* functionality in that claimed combination of features?

21 Now, 20 years ago the law was not so clear, but the
22 Supreme Court stepped in a couple times. We all know now
23 what the test is for *de jour* functionality. *De jour*
24 functionality exists if either the claim trade dress is,
25 quote, "essential to the use or purpose of the packaging or

1 it advantageously affects the costs or quality."

2 Now, as I said, it's not *de jour* functional because
3 you don't have to have any, much less the entire combination,
4 of graphic elements to serve the purpose. It is not
5 essential to the use or purpose of the packaging. It is not
6 functional by means of being advantageous to the cost or
7 quality, because the law wants to protect competitors from
8 being put to a competitive disadvantage by you claiming a
9 trade dress. Competitors are not put at a competitive
10 disadvantage. There is no benefit cost wise that we have or
11 quality wise that we have as a result of our choice of this
12 particular group of trade dress elements. So it's not
13 functional in the *de jour* functionality sense.

14 Now, backing up a half a step. I said we have to
15 show in order to show that we have rights distinctive trade
16 dress, non-functionality. I talked about distinctiveness.
17 When I was talking about distinctiveness in terms of how it
18 differs from what else you see in the marketplace, that is
19 sometimes called "inherent distinctiveness." A trade dress
20 is also protectable if it has a separate type of
21 distinctiveness. That's acquired distinctiveness, often
22 referred to as "secondary meaning." In my opinion, that's a
23 misuse. You shouldn't use secondary meaning with trade
24 dress. It's a carryover from trademark law.

25 What we're really talking about is functionality.

1 No, we're good there. Is it distinctive? Yes, we're good
2 because it is inherently distinctive. But also, even if you
3 weren't convinced that it is inherently distinctive, it has
4 acquired distinctiveness. Now, what does that mean? That
5 means that insofar as the commercial marketplace is
6 concerned, it has acquired this notoriety, being well known,
7 whatever.

8 As Ms. McHale testifies, and it's unrebutted, the
9 trade dress of GOLDTOE has been seen in thousands of stores
10 by millions of consumers as they walk through men's
11 departments. Such stores as Belk, Dillard's, Macy's, men's
12 clothing retail stores, down the scale to T.J. Maxx, Costco.
13 Who hasn't seen it?

14 In fact, there have been about 100 million pairs of
15 GOLDTOE socks sold annually recently producing over
16 \$150 million in revenue to GOLDTOE. About two-thirds of
17 that -- statistics I found kind of surprising. About
18 two-thirds of that are men's socks and almost 40 percent of
19 that are men's athletic socks. There's a lot of men's
20 athletic socks being sold in this country, and GOLDTOE sells
21 them under either this principal men's athletic sock band in
22 blue or to Macy's and Bon-Ton I think it is and the other --

23 THE COURT: Why is the difference in that? Why are
24 they selling the other ones?

25 MR. JONES: Macy's wanted a little different look.

1 They wanted -- they want to be in the line, but they wanted
2 an appearance of "we're better."

3 THE COURT: Yeah, I mean, I don't want to hurt -- I
4 realize it's not the legal issue in the case. I don't want
5 to hurt anybody's feelings, but the way -- this (indicating)
6 is what sells your sock. People look for the gold toe. You
7 put -- you could put this in white, in plain white and when
8 they walk in -- when I walk in and buy socks, that's what I
9 look for. I learned for the first time that these
10 (indicating) are made in Indonesia and these (indicating) are
11 made in America, but that's what I've always looked for. I
12 wear GOLDTOE socks myself. And packaging, I don't even look
13 at the packaging when I walk in the store.

14 MR. JONES: Well, Your Honor --

15 THE COURT: Well, maybe somebody does. But as long
16 as you got that gold toe, you're going to be probably kicking
17 most people unless you're reducing the quality while making
18 it in Indonesia.

19 MR. JONES: Your Honor, you are right. That --

20 THE COURT: Reduce the quality in the thread count,
21 they'll figure it out, like they did Krispy Kreme selling in
22 the gas station.

23 MR. JONES: You're absolutely right, that gold toe.
24 That physical gold toe is a --

25 THE COURT: To me, it is the brand. Now, trade

1 dress is another issue. I want to look at that. I don't
2 want to hurt whoever designed it. But when I walk in, I'm
3 looking for one thing, that thing (indicating) sticking out.
4 I don't care what the packaging is. I know what GOLDTOE is.

5 MR. JONES: I understand, and that's you. But the
6 fact that that's a very prominent and well-known brand on
7 that package, whether you think it's the physical gold toe or
8 the GOLDTOE word mark, that does not excuse the copying of by
9 a competitor of the packaging. And if that package has
10 distinctiveness in the marketplace, it deserves protection.

11 Even if you are shopping in Belk or wherever, even
12 if you are inclined to go looking for this gold toe, if
13 you're familiar with this line of socks and you encounter
14 this line of socks and you're looking for your wife's socks
15 or something and you see this line of socks, whether it's got
16 the gold toe on there or not, there's going to be some
17 familiarity there, and that trade dress makes an impression.
18 It may not be the prominent impression in your mind or other
19 people's minds, but, as I said, you can't copy somebody's
20 trade dress because they have a strong trademark.

21 Just because McDonald's is a strong trademark --

22 THE COURT: No, I understand that. I said that's a
23 separate thing.

24 MR. JONES: Okay. Okay.

25 THE COURT: I just didn't want to hurt somebody's

1 feelings that came up with this trade dress that's what was
2 selling this sock. The main seller for this sock is that
3 toe.

4 MR. JONES: And Ms. McHale of marketing knows that,
5 Your Honor. As you said, that's not particularly germane to
6 the legal issue.

7 THE COURT: It's not to the legal issue.

8 MR. JONES: Okay. They sell a ton of these. In
9 fact, the GOLDTOE men's athletic socks sell about \$50 million
10 wholesale each year. That represents about 30 million pairs.

11 Now, so we're talking about -- remember now,
12 distinctiveness. You've got inherent distinctiveness or
13 acquired distinctive, and I've just given you some of the
14 factors that support our contention there's acquired
15 distinctiveness.

16 There's another thing that comes into play here.
17 Under the law of the Fourth Circuit, acquired distinctiveness
18 is presumed if the defendant intentionally copied the trade
19 dress. There is this legal presumption. It can be rebutted,
20 but it hasn't been rebutted here.

21 The Fourth Circuit in the *Cramer* case said 30 years
22 ago almost, quote, "We hold that evidence of intentional
23 direct copying establishes a *prima facie* case of secondary
24 meaning, acquired distinctiveness sufficient to shift the
25 burden of persuasiveness to the defendant on that issue."

1 That's the *Cramer* case, 783 F2d 488.

2 THE COURT: On the color issue, are you claiming
3 these colors that are blue, these blues are the same? I
4 mean, I know --

5 MR. JONES: I'm sure there's a pantone difference.

6 THE COURT: -- I know Coca-Cola red is protected
7 but not every red. Is that -- just on the blue color, is
8 that do you contend those are exactly the same?

9 MR. JONES: Your Honor, we have not claimed trade
10 dress protection in any of those three constituent elements
11 independently.

12 THE COURT: I understand. I understand.

13 MR. JONES: Okay.

14 THE COURT: And then the labeling is you got the
15 block that clearly says this is GOLDTOE and anybody can read
16 that it that can read English. This is in script GOLD LABEL.
17 So -- and there's some differences on there. I understand
18 what you're saying.

19 MR. JONES: Your Honor --

20 THE COURT: There is that -- that gold box is a
21 little -- does look a little the same, but the side panels
22 are somewhat different.

23 MR. JONES: Your Honor, if they were identical,
24 we'd be here on a motion for summary judgment instead of a
25 motion for preliminary injunction. I wish I could draft the

1 facts, you know, to get us there, but we have the facts that
2 we have.

3 THE COURT: I understand.

4 MR. JONES: So looking at the issue of secondary
5 meaning, is there a presumption of acquired distinctiveness
6 as a result of direct copying?

7 Well, recall the facts as I recounted them to you.
8 Dillard's had a motivation to copy. They wanted to minimize
9 GOLDTOE sales. They wanted to increase the sales of their
10 own house brand. Dillard's had an opportunity and a means to
11 copy. The redesign project, the redesign package was a part
12 of the efforts to accomplish those goals, and Dillard's
13 management was not even satisfied until they did copy them.

14 So I think that there is plenty of evidence here to
15 support the presumption of acquired distinctiveness, even if
16 you didn't find acquired distinctiveness to exist because of
17 the commercial pervasiveness, and even if you didn't find the
18 inherent distinctiveness as a result of -- excuse me. Yeah,
19 the inherent distinctiveness as a result of the fact that the
20 GOLDTOE packaging differs significantly from everything else
21 in the marketplace.

22 Now, the second question. Once you answer the
23 question do we have trade dress rights, the second question
24 is, is the Dillard's men's socks packaging likely to cause
25 consumers to believe that there is a commercial relationship

1 of some sort?

2 Your Honor, there's another Fourth Circuit
3 presumption that comes into play here as a result of the
4 intentional copying, and that is that the intentional copying
5 of a trade dress creates a presumption that some form of
6 relative confusion is likely to result, and that may be the
7 end of the likelihood of confusion study. But if you want to
8 go into the elements, if you don't want to rely on the
9 presumption, you look at the seven factors from the *Pizzeria*
10 *Uno* case. And if you look at those, the first is the
11 strength of trade dress. Strength of trade dress is either
12 inherent or commercial strength. Either way, we believe
13 we've covered that factor.

14 You look at relative similarity of the packaging
15 materials, the similarity of the products. The products are
16 the same type of products. We think there's strong
17 similarity in the packaging. You look at the similarity of
18 the retail channels. They both flow through the same type of
19 retail channel. In fact, at least at the present time in
20 Dillard's stores. You look at types of advertising and the
21 way that the products are promoted, retail circulars, that
22 sort of thing. You look at the defendant's intent; and when
23 it is apparent that there was an intent to emulate, it is
24 strong in favor of the plaintiff. There is no acc- -- this
25 was no accident, let me put it that way. There was an intent

1 to emulate here. And Mr. McElyea could not satisfy
2 management until he got close enough to make -- to
3 incorporate the features that would make people think of the
4 GOLDTOE packaging and think that there was some similarity.

5 Now, and store -- actual confusion when it exists
6 is also a factor. We have this circumstance that was
7 photographed in a Dillard's store here in Charlotte. And,
8 Your Honor, you'll see that this Dillard's store used floor
9 fixtures, not the wall fixtures. And you'll see that they've
10 got a floor fixture labeled GOLD LABEL, but you'll see
11 GOLDTOE mixed in too. Now, Your Honor, I submit that if
12 Dillard's employees were confused and mixed them up, then the
13 public is even more likely to be confused.

14 The third question -- we've covered now do we have
15 rights, is there infringement. Have we met the other
16 prerequisite for a preliminary injunction? There are four of
17 those: The likelihood of irreparable harm to the plaintiff
18 if there's no injunction; the likelihood of harm to the
19 defendant if it does issue; the likelihood of success on the
20 merits, which we've covered already; and the public
21 interests. I'll deal with that very quickly.

22 The public interests almost always favors the
23 issuance of a preliminary injunction in a legitimate
24 trademark or trade risen infringement case. The public
25 should be free from confusion, deceit or mistake. No doubt

1 about it.

2 The likelihood of irreparable harm to a plaintiff
3 is generally applied once a trade dress or trademark
4 plaintiff has shown a likelihood of success on the merits.
5 The Fourth Circuit hasn't said that that applies, but the
6 Fourth Circuit has noted that the district courts in this
7 circuit do apply. They just haven't said it, and we give it
8 our stamp of approval. They at least said it in the *Scotts*
9 case. And I don't think they have had an occasion to address
10 that since then.

11 So we know the district courts in this circuit do
12 apply that presumption. They even apply it following *eBay*.
13 We go through in our brief the reason why *eBay* doesn't
14 diminish the strength of our contention in this issue.

15 The gist of it, Your Honor, is this: There is no
16 trademark. There is no trade dress. But for the fact that
17 whatever that trademark or combination of elements is, it
18 connotes in the marketplace a single source. And once you
19 have somebody else using something confusingly similar, you
20 have destroyed the essence of a trademark or trade dress. If
21 it connotes two sources, it no longer has its inherent
22 character of being a single source identifier.

23 Last factor, likelihood of -- excuse me, the
24 irreparable -- the harm that the defendant would incur if
25 there is an injunction. We're not out to put Dillard's out

1 of business. We're not out to foreclosure them from selling
2 socks. We're not out to foreclosure them from selling socks
3 in private labeled packaging. Instead, in fact, they're not
4 even -- Your Honor, they're not even going to be foreclosed
5 from selling men's athletic socks in private labeled
6 packaging that they already have. There is no reason why --
7 other than stubbornness perhaps, there is no reason why if
8 you enjoin them today they cannot tomorrow start using the
9 old packaging bands, and they can do so until the end of the
10 lawsuit or until they design and implement a new design. So
11 there is minimal, if any, harm that would result to Dillard's
12 if there is a preliminary injunction issued.

13 I submit that we have satisfied all four requisites
14 for a preliminary injunction motion. Thank you, Your Honor.

15 THE COURT: Yes, sir. Thank you.

16 MR. ADAMS: Good morning, Your Honor.

17 THE COURT: Good morning.

18 MR. ADAMS: With the Court's permission, I'm going
19 to remain seated if that's okay.

20 THE COURT: That's fine. Whatever you're
21 comfortable with.

22 MR. ADAMS: We have a PowerPoint presentation.

23 THE COURT: Whatever you're comfortable with works
24 with me. That's what I said. It's hard enough to do this
25 stuff where you guys are. It's a lot easier to do it up

1 here. A lot more boring up here.

2 MR. ADAMS: I'll change places with you if I get to
3 decide.

4 Can you see the monitor, Your Honor?

5 THE COURT: It should come up there for me.

6 MR. ADAMS: Just very quickly, Your Honor. I'm not
7 going to spend a lot of time on this because I don't think
8 it's worth a lot of time.

9 THE COURT: Oh, it's worth some time.

10 MR. ADAMS: Dillard's makes -- Gildan is trying to
11 suggest that in a fit of pique or whatever, Dillard's decided
12 to shove Gildan's aside and take over their brand for its own
13 use. In fact, what happened is that, and Your Honor alluded
14 to it in the what you see up there was the socks from
15 Indonesia.

16 Dillard's began having reduced sales of Gildan
17 socks, GOLDTOE socks long before this issue ever came up.
18 They were having quality control issues. They were having
19 short shipment issues, and they also made a decision, of
20 course, to go with down-market brands. And Gildan has the
21 obvious right to do that, but Dillard's obviously doesn't
22 have to like it. But you can expect that if there are
23 GOLDTOE socks that are now instead of being available just at
24 Macy's and Belk's and Dillard's and a few relatively high-end
25 department stores, you can also buy them at Wal-Mart, Kohl's,

1 Target and so forth, fewer socks are going to be sold at
2 Dillard's no matter what kind of packaging they're in and
3 that's exactly what they're --

4 THE COURT: That's a business decision.

5 MR. ADAMS: Exactly. They made a business
6 decision.

7 What do you see here in an e-mail? Quality control
8 issues. Gildan: "We won't have a definitive answer until
9 next week at the earliest. Sorry." Then, again, "Any
10 decision yet?" Dillard's says, "Attached is a picture of one
11 of the new socks. The thread has come unraveled."

12 Here we have Dillard's is saying, "Please call me.
13 Call me please." Gildan: "After review of current
14 inventory, we will need to remake produce to the desired
15 specifications. Unfortunately this will take time. We
16 cannot get you new product for six weeks."

17 I love this one. Here they were shipping product.
18 Dillard's says, "We continue to have shipping issues with
19 this GOLDTOE athletic style."

20 And here you can see that Dillard's shipping seems
21 to be getting worse. "I'm out of stock in some stores on
22 some styles. Not a good time to be out of stock. Are you
23 going to cover my lost sales? Service has been terrible.
24 Need to start looking for a new sock supplier."

25 Dillard's: "We are still getting short shipped."

1 If you look over at the e-mail, you'll see that from what
2 Dillard's ordered, they were typically getting anywhere from
3 15 to perhaps 30 percent of the actual products.

4 THE COURT: Okay. So I see now that your position
5 is that you did it for quality reasons. The question,
6 though, for the Court is, you know, why this package? I
7 mean, why not just, you know -- why not have black and white
8 packaging and say "American made, American strong"?

9 MR. ADAMS: That's why we're going to move along.
10 I just wanted to dispel the notion that because --

11 THE COURT: I mean, it seems like nobody wants to
12 ever put "American made" on something anymore, but that's --
13 that would seem, to me, to be a big selling point. Unless
14 the price point is so ridiculously different because of -- I
15 don't think you have the problem anymore of high-price people
16 making socks in America anymore. They're all out of work.

17 MR. ADAMS: Not surprisingly, Your Honor, we look
18 at the issue somewhat differently than Gildan does. Gildan
19 has not clearly shown that it has a likelihood of success
20 proving a protective or trade dress, which they agree is a
21 threshold requirement.

22 THE COURT: Well, I've gone over the stuff that is
23 different with them. I mean, you did switch something to a
24 blue. You do have a gold box that's -- their gold box on the
25 socks that I have here says -- it's a little larger than

1 yours -- says "Cushioned, cotton liner, six pair." You go,
2 "Six pairs." And then you have very small "Made in the USA,"
3 which I think probably ought to be switched around on that if
4 you want to have a better marketing idea here. I have to
5 look at these things. Like I told him, what I've always done
6 is walked through and looked for these. This (indicating) is
7 what I look for, this gold toe. I don't care about the
8 packaging.

9 MR. ADAMS: Your Honor, I appreciate that.

10 THE COURT: I realize there may be lots of people
11 walking in and read every label. Until this case, I did not
12 read these labels.

13 MR. ADAMS: Your Honor, I think we've adequately
14 addressed the concern you have about the elements on the
15 label. But I want you to look again at the sentence I just
16 read. There's a threshold issue here as to whether or not
17 there's protective trade dress, and the Fourth Circuit has
18 had quite a bit to say about that. Nothing you've heard from
19 Mr. Jones, but we're going to cover that.

20 THE COURT: Let me hear about that.

21 MR. ADAMS: I ask you to be patient, please.

22 THE COURT: I will. I'm just having heard all of
23 that and looked at these things, I have some formulation of
24 thoughts about it. So, you know --

25 MR. ADAMS: I think --

1 THE COURT: But force the ones that are favorable
2 to you and disabuse me of the ones that are not.

3 MR. ADAMS: I'll do my best.

4 The question on whether Gildan has directive trade
5 dress evolves into several questions. First of all, Gildan's
6 trade dress must be exclusive to it. It has to have a
7 consistent overall look, and there's some actual points of
8 agreement between Gildan and Dillard's.

9 Let's remember what Mr. Jones said. Their trade
10 dress is not registered. They've acknowledged that in their
11 briefs. He said it here today. They don't claim that they
12 have any trademark registration on their trade dress.
13 They're claiming their overall appearance --

14 THE COURT: I even ruled where you don't have one.
15 I mean, you don't have to have a trademark. The famous
16 barbecue restaurant case that I handled, *Rib Holdings v. Fat*
17 *Buddies*. That was the seminal case on restaurant trade
18 dress.

19 MR. ADAMS: Your Honor, there's a specific reason
20 why I mention the fact that their trade dress is not
21 registered. We all know it's not, but that has significance.

22 Gildan claims that "copying" entitles it to a
23 presumption of secondary meaning. It also claims that
24 "copying," which it claims it's shown, entitles it to a
25 presumption of likelihood of confusion, and it's wrong on

1 both scores. Here's why: *Ale House Management*, 2000 Fourth
2 Circuit case. This is from the quote. This is a quote from
3 the Fourth Circuit: "Before considering the significance of
4 plaintiff's assertions of intentional copying, we must
5 address whether plaintiff had an exclusive proprietary
6 interest in the trade dress of its facilities." I think we
7 all agree on that.

8 "Our cases make clear" -- this is the same case.
9 This is from *Shakespeare*, but it's the same quote as in *Ale*
10 *House*. This is after the *Cramer* case. "Our cases make
11 clear, however, that that presumption of secondary meaning
12 arises only where the intentional copying is motivated by an
13 intent to exploit the good will created by an already
14 registered trademark."

15 So all the information that Mr. Jones has given you
16 about copying presumptions is totally irrelevant to this
17 case. The Fourth Circuit said the same thing in the *Ale*
18 *House* case, and I'm going to reference it again in just a few
19 minutes because it's just that important.

20 They have virtually no evidence of actual acquired
21 distinctiveness. Why? Because none of Ms. McHale's
22 declaration attribute any particular amount of those products
23 to any one of those particular labels. And, in fact, we'll
24 show you where a lot of advertising and promotion that Gildan
25 does they don't use the label and so it couldn't have any --

1 it couldn't have any significance.

2 So, again, back to the *Ale House* case. "Some
3 proprietary interest is necessary before trademark protection
4 applies. Indeed, even if a party does 'copy' a design and
5 'sells' an almost identical product, "this it may have every
6 right to do under federal laws.'" That's the issue Your
7 Honor is going to have to cope with. The initial threshold
8 question of whether or not they have shown acquired
9 distinctiveness in the absence of a registered trademark.

10 Now, the *Ale House* case is a particularly
11 interesting case. It involved -- you may be familiar with
12 the Carolina Ale House, which is a couple of blocks down the
13 street. This was a lawsuit between two competing
14 restaurants, and one of the restaurants claimed that the
15 arrangement of the chairs and benches and bar and the TV
16 monitors and so forth was too close, and the lawsuit was in
17 the Eastern District. Judge Fox granted summary judgment for
18 the defendant on the trade dress issue and it was affirmed by
19 the Fourth Circuit. We'll talk about that a little bit more.

20 Now I'm going to address the threshold issue
21 that the Court is going to have to grapple with.

22 Here, again, we're looking at the *Ale House* case.
23 "Accordingly, before considering the significance of
24 plaintiff's assertions of intentional copying, we must
25 address whether plaintiff had an exclusive proprietary

1 interest in the trade dress." In this case, the unregistered
2 trade dress.

3 So what is trade dress? The Supreme Court says it
4 "involves a total image of a product and may include features
5 such as size, shape, color and color combinations."

6 Gildan cannot delete from its trade dress the
7 elements which eliminate likelihood of confusion. Gildan
8 would have you believe that it can pick and choose and hollow
9 down its label until only the elements are left that look the
10 most like our label, and we'll see some cases where we find
11 that you just can't do that, including some references that
12 Gildan cited the Court to.

13 A few court cases outside the Fourth Circuit which
14 stand for the proposition that you can narrow it down, your
15 trade dress, as much as you'd like to. They don't trump the
16 Fourth Circuit cases to the contrary, and they certainly
17 don't trump the Supreme Court's decision in Two Tacos [sic].

18 The Supreme Court said in Two Tacos [sic] even if
19 the package is -- "Only the 'total image' of the products are
20 at issue." The trademarks of the respective products
21 dominate the respective packaging but are ignored in Gildan's
22 motion.

23 This is where I think Your Honor, with all due
24 respect, is totally wrong when you say that the significance
25 of the gold toe itself on the sock is not relevant to the

1 trade dress issue because that trumps that and the GOLDTOE
2 trademark on the label itself trumps every other issue in
3 this case.

4 It's inconceivable that anybody can walk in a store
5 and look past this famous GOLDTOE trademark they're talking
6 about and the actual gold toe on the sock itself and somehow
7 be confused because of a tiny box up in the upper right-hand
8 corner of the label, even if it were on all of their
9 products. And as we'll see in if just a few moments, it
10 clearly is not.

11 THE COURT: Obviously, you like something about the
12 label. There are a few things on there that are similar. So
13 there were some things that apparently you thought would help
14 on the label.

15 MR. ADAMS: Well, let's take a look at --

16 THE COURT: I still think the American -- "American
17 made" is the biggest thing when you put it on something.

18 MR. ADAMS: Well, Mr. Shields is sitting here, and
19 I'm sure he's taking careful note of that, Your Honor.

20 This is a case that was cited in McCormick's -- I
21 mean, not McCormick's. *McCarthy's*. It was a cite in
22 Gildan's brief regarding its ability to subtract elements
23 from its label until it gets down to where it wants its trade
24 dress to be.

25 One of the cases that is cited by *McCarthy* in that

1 section is the *AM General Corp. v. DaimlerChrysler Corp.* case
2 decided back in 2013. And the court said so far so good for
3 Gildan. It is proper for DaimlerChrysler to exclude the head
4 lamp openings from its definition of its alleged trade dress
5 in the Jeep grille design. If you look down, you can see at
6 issue in this case was the Jeep over on the right they had
7 this vertical -- these vertical slots, which have been around
8 for a long time. And when Hummer came out, it came out with
9 these vertical slots as well. And so there was a lawsuit.
10 Chrysler claimed that, well, this is our trade dress, this
11 grille, but you can include the headlights.

12 The court said, yeah, well, you -- you can describe
13 your trade dress not including the headlights if you want to;
14 however, the head lamp openings cannot be ignored in making
15 the comparison to determine a likelihood of confusion. And
16 on that grounds, they found no infringement.
17 Notwithstanding, the court found that the grille openings
18 itself were highly similar. The presence of these
19 headlights, the round ones and the square ones, eliminated
20 the likelihood of confusion.

21 I submit, Your Honor, that a similar situation is
22 present here because Gildan is saying forget about the fact
23 that you have what it calls an iconic trademark, the gold toe
24 itself on the physical sock, which you are required to see
25 when you purchase the product. Forget all of that and focus

1 on this tiny little box or this shadowy athlete it's got or
2 the red band which ordinarily --

3 THE COURT: He says you don't have the shadowy
4 athlete anymore.

5 MR. ADAMS: They're saying, though, look at these
6 elements. I know we don't have the athlete on it. They're
7 saying let's take this and that away.

8 So what did the court say in the *AM* case?
9 "Recognizing the dissimilarity of the H2 and the Wrangler or
10 Liberty when viewing anything other than the grille, the H2
11 grille is much more likely to trigger consumer association
12 with the Humvee (as it is designed to do) than to threaten
13 the strength of the grille configuration as a DaimlerChrysler
14 mark."

15 There, again, I think that's something Your Honor
16 is going to have to cope with. If you feel like Gildan is
17 going to have to prevail, you'll have to explain to the
18 Fourth Circuit why these cases don't apply and why, despite
19 Your Honor's own comment, the public should be obliged to
20 ignore altogether the presence of the word mark on the label
21 and this gold toe which they're being forced to see on the
22 sock.

23 THE COURT: I spent my current life explaining to
24 the Fourth Circuit on all these rules.

25 MR. ADAMS: What does Gildan say regarding their

1 own trade dress? Well, in their complaint they restrict it
2 to the men's athletic socks. So we really haven't seen the
3 dress socks and so forth before. And I suppose Your Honor
4 will have to make up his own mind about whether or not
5 there's really a common theme with all those different
6 colors, the straight bands, the curved bands, the white, the
7 black, the green, the brown, the blue. But to me, that's an
8 open question. I think under the law it clearly is.

9 In the complaint, Gildan complaint, defined its
10 trade dress as a blue band. That's what it says. It's a,
11 quote, A blue band with contrasting gold elements and white
12 lettering for its word mark having two components, the first
13 of which is the term 'GOLD'; a gold partially-serrated
14 rectangle, dah, dah, dah; and side panels, plural, which
15 incorporate the color gold. And they not only describe it,
16 but they reference it in the complaint as Exhibit 1, and I
17 think you're holding Exhibit 1 to their complaint, the
18 photograph of it in your hand. Here's Exhibit 1. And they
19 claim this represents the total image of the alleged trade
20 dress identified by Gildan in its complaint. Total image.
21 Quoted directly from *Two Pesos*.

22 THE COURT: Are the thread counts the same in
23 these?

24 MR. ADAMS: I have no idea.

25 So what is the strength of a trade dress? "The

1 strength of a trade dress or trademark is measured in terms
2 of its distinctiveness, or more precisely, by its tendency to
3 identify the goods sold as emanating from a particular
4 source." Well, look at the language I've bolded. It has to
5 be considered in its commercial context. And that's why it's
6 important for the Court to think in terms of, for example,
7 how it bought its GOLDTOE socks instead of what you see up
8 here on the boards.

9 "The strength or distinctiveness of a mark
10 determines both the ease with which it may be established and
11 the degree of protection it will be accorded."

12 So what is the commercial context? It's the gold
13 toes on the socks that's virtually on every pair. It's the
14 registered GOLDTOE word mark.

15 And by the way, under the law you can't dissect
16 your own trademark. You can't say, well, we have a
17 registered mark for GOLDTOE, but for this purpose just ignore
18 the toe part and let's just think about the GOLD. That's
19 cited in our brief.

20 It includes the GOLDTOE design trademark. It
21 includes their commercial context. It includes a shadowy
22 athlete. It includes the red triangle on the left-hand side
23 of the package. It includes the blue background, and it does
24 include the gold rectangle directly above and aligned with
25 the semicircular portion of the design trademark.

1 There's actually a reason for that serration. If
2 you look down below the word "toe," Your Honor, you see what
3 is actually a toe of a sock. And what that reflects is that
4 the sock is actually been -- the toe of the sock has actually
5 been separated from the sock itself so the word "GOLDTOE" can
6 be inserted.

7 THE COURT: And what does the serration on yours
8 do? What does that recommend?

9 MR. ADAMS: It's completely arbitrary. It has no
10 function or meaning, whatever.

11 THE COURT: Okay.

12 MR. ADAMS: So Gildan is required to "clearly show"
13 that the trade dress alleged in its complaint is distinctive.
14 And "distinctive" means that the purchasing public recognizes
15 a trade dress as a source identifier.

16 Here's the quote from *Wal-Mart*. "We hold that, in
17 an action of infringement of unregistered trade dress, a
18 product's design is distinctive, and therefore protectable,
19 only upon a showing of secondary meaning." Again, no
20 presumption. You have to show it. As far as I know, the
21 *Wal-Mart* case from the Supreme Court about 15 years ago is
22 still good law. I'm confident that it is.

23 So Gildan has presided -- provided no, has zero
24 evidence of acquired distinctiveness of its trade dress. It
25 provided financial marketing data for its socks, but it

1 didn't provide any financial marketing data for the claimed
2 sock packaging. And there is none because Gildan does not
3 show its packaging in its promotional materials and
4 advertising.

5 Let's go to GOLDTOE's website. This is connected
6 to the web, and you can see on their own website dozens of
7 GOLDTOE socks for sale, but absolutely no reference or image
8 of the label they claim is the famous trade dress. And the
9 trade dress must be consistent.

10 So we asked them. In the discovery we asked them
11 to produce all packaging in which the Gildan footwear has
12 ever been packaged for display and sale since January 1,
13 2008. And this is their response: Gildan will produce
14 specimens or images of all packaging in which socks or other
15 hosiery goods, dah, dah, dah, have been packaged for display
16 since January 1, 2008.

17 Here's what they produced. This is all of them
18 (indicating). This is their entire production in response to
19 our request and their statement they would produce all of
20 their packaging. And not surprisingly, on these particular
21 images you do see a certain amount of consistency, which
22 required us to do a little of our own third-party discovery.
23 And here you see other brands, and I'm going to get this one
24 out at this point and this one too.

25 These (indicating) were ones that Gildan failed to

1 produce, and these are just athletic socks. They didn't
2 produce any of these other things that we've just seen for
3 the first time today.

4 Well, let's take a look at these. These are the
5 athletic socks. Totally different image in the upper
6 left-hand corner, different color, does have a box but
7 different -- still has the gold toe, though.

8 The one next to it, a black and blue label with no
9 drop-down box.

10 The one next to that, a black label. And instead
11 of the shadowy athlete, it has a pair of it looks like gold
12 socks. I think that one does have a small drop-down box on
13 it.

14 The one next to that, a much narrower band,
15 different color, no athlete at all, no side panels.

16 The one next to that, a white label with gold
17 writing for GOLDTOE.

18 One down in the lower right-hand corner, completely
19 different package.

20 This one has a triangular cutout on the bottom,
21 different color, completely different style or drop-down box,
22 no athlete in the right-hand -- on the left-hand side.

23 Then you go over to the next one. Drop-down box is
24 not rectangular, not serrated. It's semicircular. No
25 athlete. It has a distinctive band across the top of the

1 label and then it has a drop-down tag off the bottom of the
2 label.

3 Then the one after that -- I want to show Your
4 Honor this one. This is the one that takes the cake
5 considering the fact that they're making such a big issue of
6 the drop-down box. With the Court's permission, I'll
7 approach the bench.

8 This one has no drop-down box at all. This one is
9 quite similar to the one that they've made such an issue
10 about, this one right here (indicating), except for the fact
11 that you'll see instead of a drop-down box, they simply have
12 two narrow lines that extend down and sort of bracket the
13 text.

14 Then going on, you'll see next to that another
15 GOLDTOE label, which I submit has a completely different
16 appearance, a different type of athlete. That might be a
17 bicycle rider. It's hard to tell from here.

18 And then finally moving over to the lower right,
19 you see yet another package, completely different coloration,
20 side panels and front panel, separate drop-down tag, which is
21 separately attached to the sock, and then a round sticker,
22 which has been -- which is formed over the label.

23 But what's consistent about all of this, Your
24 Honor? In every single case, with the possible exception of
25 the one on the lower right just to the second one from the

1 right, you do see the gold toe. So anyone wanting to go in a
2 Belk's or a Dillard's or anywhere else and buy a pair of
3 GOLDTOE socks, all they've got to do is look past the label,
4 like Your Honor does, and find the sock with the gold toe in
5 it. So Gildan's athletic sock packaging, contrary to what
6 you've seen to date, is highly inconsistent.

7 So looking at an example. This is a display in a
8 Kohl's department store. In fact, Gildan produced this to
9 us. There are different labels, different types of labels,
10 several different types of GOLDTOE labels all for athletic
11 socks hanging on the same display rack. Some of which have
12 separate drop-down tag, some of which are blue, some of which
13 are black, some of which are gray, some of which are narrower
14 than others.

15 Here's another one also taken at Kohl's with the
16 Kohl's private brand hanging directly next to the GOLDTOE
17 socks. Blue, displayed side-by-side with GOLDTOE athletic
18 socks. Apparently, Gildan doesn't have a problem with that.

19 So what does the law say about copying? Well,
20 first of all, Gildan has not offered any evidence that if
21 there was any copying, it was done with an intent to deceive
22 on Dillard's part. They haven't offered any evidence of
23 intentional copying by Dillard's of the dominant portions of
24 the Gildan trade dress, which is the gold toe on the sock and
25 the prominent GOLDTOE language on the label. Those are

1 without question the dominant portions of the mark.

2 We'll see in just a few moments under Fourth
3 Circuit law and Supreme Court law that trumps less
4 significant aspects of the label. At most, what the evidence
5 shows is that Dillard's referenced the Gildan packaging as
6 one, among many others, during the design process. This is
7 hardly evidence of an intent to deceive. No one out to
8 deceive someone is going to not put the most dominant parts
9 of the trademark on their product. And we would be in a
10 completely different situation, of course, if we had
11 manufactured a sock with a gold or a yellow toe. Obviously,
12 we did not do that. We never have done that.

13 So what Mr. McElyea said, he says, yeah, it's
14 common practice. In fact, he also testified in their sort of
15 workshop at Dillard's they have an entire wall which is
16 covered with every sock that they can find no matter whose
17 brand it is. It's a bit like dress styles changing from year
18 to year and decade to decade. In one year some color may be
19 in style for one year and another year another style. The
20 same thing applies to labels. And I think we will see in
21 just a few moments that, for whatever reason, blue is a
22 dominant color for athletic socks.

23 So he said, well, it's a common practice when we do
24 design work. We take samples from around the world. We want
25 to stay current.

1 So what Gildan is asking the Court to do is to
2 ignore the gold toe seen on every pair of GOLDTOE socks. He
3 also asked the Court to ignore the fact that there is the
4 iconic GOLDTOE label on the GOLDTOE pair seen on every
5 GOLDTOE socks.

6 So what happens when you walk in the store? You
7 look, you'll see on every one of these packages you'll see
8 sticking up above it the gold toe on the sock itself.
9 Clearly, the most dominant aspect of the entire display for
10 those gold toes sticking up out of the top of that label and
11 directly down below it the largest text by far on that label
12 is the registered trademark GOLDTOE.

13 So they're asking us to ignore their registered
14 trademark on the gold toe itself and on the GOLDTOE label.
15 They're asking you to ignore the shadowy athlete. They're
16 asking you to ignore the triangle.

17 There's a reason for that triangle, Your Honor.
18 That is, if you go back, you can see that these socks are so
19 bunched together, a lot of times you can't see that side
20 panel. So to make sure it's visible from the front, that red
21 triangle, which is not of course on our product, is actually
22 projected out from the side to the front so it's easier to
23 see. There it is there (indicating). So they want you to
24 ignore that as well.

25 So they're saying let's ignore all of these -- all

1 of these things and focus on the color of the packaging,
2 which is blue, and on the small rectangle. Forget about the
3 iconic gold toe.

4 In fact, we did a little photo shopping. Here's
5 what they claim their trade dress is on the left. You see
6 how much they've tried to subtract from the overall
7 appearance. Remember the overall appearance language in the
8 Supreme Court's *Two Tacos* case. Remember the requirement for
9 consistency and for viewing the product in the commercial
10 context. This comes nowhere close to that standard.

11 So let's go back to the *Ale House* case for a
12 minute. *Ale House* said -- Your Honor has got to read that
13 case because it says a lot about how this case ought to come
14 out. "Trade dress should be considered generic" -- this is
15 the Fourth Circuit talking -- "if well-known or common, a
16 mere refinement of commonly-adopted and well-known form of
17 ornamentation, or a common basic shape or design, even if it
18 has not been refined in precisely the same way."

19 There is a specific reason why I quoted this
20 language, which we'll see in just a moment. Look at all of
21 the blue socks that we were able to find -- blue labels that
22 we were able to find very quickly just by doing a little bit
23 of shopping. Columbia, Adidas, Nike. The Nike color blue is
24 almost the same color as ours. Quite a bit lighter than the
25 GOLDTOE.

1 How about the rectangular boxes? Totally generic.

2 Asics, drop-down box on the right-hand side of the
3 label. One next to it, Champion, two drop-down boxes on the
4 right-hand side of the label. Hanes, three drop-down boxes
5 on the side of the label. Wolverine, two drop-down boxes on
6 the side of the label.

7 The rectangular information boxes are functional.
8 Why do I say that? Because they say it. Right in their
9 complaint they admit that it's functional. They put it there
10 as a distinctive standout to, quote, "For informing consumers
11 of how many pairs of socks are included in the package."

12 Now, even though as the Fourth Circuit said, it
13 might not have been -- even if it had not been refined and
14 precisely the same way, look at what we're seeing here, Your
15 Honor. The same -- the same basic color, drop-down boxes.
16 And, again, this was just a very short shopping trip. We
17 have some of these samples here.

18 So let's look at some more. Let's take them at
19 their own argument for a minute and let's look at their
20 drop-down boxes. Just the GOLDTOE.

21 This one says "Cushioned cotton liner, six pair."
22 This other one it looks like it has a piece that's a flap
23 folding down, not serrated, on the bottom and conveys
24 different information. Another GOLDTOE. This one is not
25 serrated. It's a different color. It has different

1 information on it. Another GOLDTOE drop down. This one
2 looks like a box within a box. It has a larger black box and
3 inside it is a smaller blue box that has serrated. This
4 looks like one we may have seen today. No, I don't think
5 this is even -- this one is not even on the board. This is a
6 different one yet. Another drop-down box with a big "G" on
7 it. And then another one, a black box within a box. I guess
8 that's the black box on a gold band. Yet another difference,
9 "Cushion Tec, acrylic crew, three pair." Yet another one.
10 This one, again, another athletic sock, but directly down
11 below the iconic GOLDTOE, which everybody sees first when
12 they walk in the store and clearly identifies it only as a
13 GOLDTOE product, you see a swervy -- a dark color swervy
14 band, which is quite narrower than the GOLDTOE band mounted
15 on the wall with a separate box, which is apparently attached
16 to the sock somewhat separated and below the dominant label.
17 Here's another GOLDTOE sock. No rectangle. Although it does
18 have a box up at the top that says "New cushioned sole,"
19 which is attached separately.

20 THE COURT: Was this how you all displayed them in
21 your store where you couldn't see the toes? Just kidding.

22 MR. ADAMS: And then on the right-hand side another
23 GOLDTOE label with no rectangle whatsoever, and this is the
24 one I just handed Your Honor. We showed you some where there
25 were no boxes. This one, instead of having a box, has a

1 couple of ziggyzag lines down it.

2 THE COURT: I saw that.

3 MR. ADAMS: Again, this wasn't produced during the
4 discovery, even though we asked for it. We found this
5 packaging in the stores and bought it on our own.

6 THE COURT: Somebody was confused that day on the
7 label making.

8 MR. ADAMS: So Gildan's alleged trade dress is not
9 distinctive for another reason, the side panels. Virtually
10 every pair of socks sold in this way has side panels and you
11 see down in the bottom. You can see across the top there's
12 several pairs that have side panels, and we have samples of
13 these. Blue here on the left and the bottom center, a blue
14 label with the gold side panel. Here's a dark gray label
15 with a gold side panel. Here's another foot joy blue label
16 with gold or yellow side panel and a black and gold front
17 panel with a black and yellow side panel. So, again, there's
18 nothing unique about side panels. There's no -- nothing
19 distinctive about the fact that they're gold.

20 Even Gildan's use of their side panel is
21 inconsistent because you see here, I would concede, the one
22 on the left is gold, but the one on the right, as far as I
23 can tell, is not gold. It may have a gold highlight to it,
24 but that's blue. And, again, you notice the red arrow that
25 sticks out from the side. At least on some of their

1 packages.

2 Here's another GOLDTOE product we haven't seen yet,
3 but this one has a black label, a gold drop-down box, but it
4 has a red side panel. This label is much -- seems, to me,
5 much deeper than some of their other labels. In addition, it
6 has a separate label hanging down from the label. It says
7 something. It says "two to three pair."

8 So the first test that Your Honor has to decide the
9 question is where in the record is there evidence regarding a
10 single consistent overall image to Gildan's athletic record.
11 It's our submission there simply isn't one.

12 So what's the second issue? Has it shown a
13 substantial likelihood of successfully proving likelihood of
14 confusion.

15 We've already established that they're not entitled
16 to any presumptions. Why? Because their trade dress is
17 unregistered. The Fourth Circuit has made that quite clear
18 in *Shakespeare* and *Ale House* and several other cases. It has
19 no evidence of actual confusion. It has no consumer
20 evidence, no expert evidence. It rests its case almost
21 entirely on this presumption of confusion and damage to which
22 it's not entitled as a matter of law.

23 You need to read Ms. McHale's declaration very
24 carefully, Your Honor, because what's important in that
25 declaration is what's not said, and there's nothing said in

1 that declaration about what they are trying to prevent us
2 from doing.

3 So let's go back -- I want to go back to *Ale House*
4 one more time. And here the Fourth Circuit is talking about
5 what you have to consider and what you don't. And they're
6 focusing here on the consistency requirement, on the
7 consistent look and appearance of the product.

8 "There is no evidence that Ale House Management's
9 centrally located rectangular bar with two types of seating
10 on either side and television monitors, arcades, and pool
11 tables, decorated generally in wood and brass, is 'unique or
12 unusual.' This is particularly so when Ale House
13 Management's own configurations differ from facility to
14 facility, denying it a single model from which to distinguish
15 the numerous similar configurations used by other
16 food-and-beer establishments."

17 Could this be a clearer analogy to the situation
18 here, Your Honor? But instead of talking about television
19 monitors and arcades and pool tables, we're talking about
20 different colored side bands. We're talking about a dozen
21 different types of drop-down boxes in sizes, colors, shapes,
22 and everything else. We're talking about the absence of side
23 bands. We're talking about different colors.

24 You could almost take this second line out of the
25 second paragraph or second sentence and transpose it by

1 saying it is particularly so when Gildan's own configurations
2 differ from package to package, denying it a single model
3 from which to distinguish the numerous similar configurations
4 used by other sock manufacturers. And that is exactly the
5 situation we have here.

6 I want to talk briefly about one or two more cases
7 and then I think we're done.

8 There's a recent case that we spent some time
9 discussing in our brief, Your Honor, and it's the *Kind v.*
10 *Clif Bar* case. And there, again, that is a very, very
11 comprehensive and extremely well-written opinion by
12 Judge Wood, which covers the entire waterfront of cases like
13 this.

14 THE COURT: It's amazing how cases goes someone's
15 way are extremely well written.

16 MR. ADAMS: Well, you're right. I admit it.

17 THE COURT: It's okay. Go ahead.

18 MR. ADAMS: I'm a paid water carrier, Your Honor.
19 I'm doing the best I can for my client.

20 THE COURT: Go ahead.

21 MR. ADAMS: And so what it -- the *Kind Bar* case
22 included -- it was basically a lawsuit between two candy bar
23 manufacturers. They both made a nut-type bar. They were
24 both packaged in an elongated package with a clear windows so
25 that you can see the nuts inside. "That many products share

1 some of the elements Kind seeks to protect here as its trade
2 dress also indicates that it's claim is pitched at an
3 improper level of generality."

4 I want you to focus on that language "an improper
5 level of generality," and go back and think about that slide
6 we showed you where they had taken off of their label all the
7 things they claim weren't their trade dress. They took off
8 the side band. They took off the red triangle. They took
9 off the last half of their trademark GOLDTOE. They took off
10 the shadowy athlete and said let us focus on these parts.

11 What did the court say? "It appears then that Kind
12 impermissibly seeks protection for 'a generalized type of
13 appearance.' Allowing Kind to protect an overly broad trade
14 dress would go against Second Circuit's admonition that
15 courts should be careful not to overextend trade dress law
16 and that trade dress."

17 That is exactly the point *Ale House* was making when
18 it talked about the fact there was no consistent theme by
19 which it could distinguish, you know, one restaurant from the
20 other.

21 Now, I want to address specifically the question of
22 the fact that they have two iconic trademarks everybody
23 acknowledges on their product as it's in its commercial
24 context. As someone sees it in the store.

25 In evaluating similarity, the Court must consider

1 whether the two products "create the same general overall
2 impression." "The presence and prominence of markings
3 tending to dispel confusion as to the origin, sponsorship or
4 approval of the goods in question is highly relevant to an
5 inquiry concerning the similarity of the two dresses. When
6 prominently displayed it can go far towards eliminating any
7 possible confusion," and it cites a famous case, *Nora*
8 *Beverages* case, which had to do with some water bottles.

9 "The likelihood of confusion analysis must consider
10 the elements for which protection is claimed in the context
11 of the entire trade dress." Not separated out and dug down
12 as Gildan's would ask the Court to do.

13 And they're quoting from *Nora* here. "Therefore,
14 *Nora* can claim protection for its bottle shape if it is
15 distinctive and non-functional, but defendant's labels must
16 be considered in the analysis."

17 That same principle applies here. They can claim
18 whatever they want to as their trade dress, but you couldn't
19 ignore the other elements in the commercial context when
20 making the confusion analysis.

21 Now, let's address the issue of national versus
22 house brands. This has been litigated repeatedly, and we've
23 got some interesting slides, I think, that will illustrate
24 this. This happens to be from the *Conopco v. May Department*
25 *Stores*, but it could have been from any number of cases.

1 "With the rise of regional and national discount
2 retailers with established names and logos, retailers who
3 market both national brands and their own private label
4 brands in direct competition, this form of competition has
5 become commonplace and well known in the marketplace. When
6 such packaging is clearly labeled and differentiated we are
7 unwilling to apply a rule that would make such competition
8 presumptively unlawful."

9 Here I want to address the issue they raised about
10 our product being placed next to theirs. You'll find in the
11 case law that they're exactly wrong. The best possible way
12 to avoid any possibility of confusion is to place two
13 products next to each other. That way the consumer when they
14 walk in they can stand in one position and simply by turning
15 their head they can see whatever differences there are
16 thereby slight or substantial as opposed to having perhaps to
17 walk around to another display or even down the mall to
18 another store. So the fact that our product, at least in
19 some cases, is next to theirs would further mitigate against
20 confusion, not promote it.

21 And so the Court -- I'll just skip over that.
22 Here's some examples. Again, this has been litigated over
23 and over again.

24 The Venture brand lotion packaging held not
25 confusingly similar to Vaseline trade dress packaging. This

1 is a *Conopco* case. You can see how similar those bottles
2 are. What was the distinctive -- what was the critical
3 factor? One said "Vaseline Intensive Care," one didn't.
4 They reversed the District Court noting, "The prominent
5 placement of black and white diagonally-striped Venture logo
6 on the front of the Venture products."

7 These products you're seeing in the case were
8 sitting directly next to each other in the store. So the
9 consumer could stand there and look at Vaseline and then look
10 at the price and then moved their eyes about five degrees to
11 the right or left and look at Venture and noticed in all
12 cases the product is less expensive and decide which they
13 want to purchase, the house brand or the more expensive
14 national brand.

15 THE COURT: Of course, yours says \$14 and theirs
16 says 10.

17 MR. ADAMS: Ours is better than theirs are, Your
18 Honor. They should be more expensive.

19 THE COURT: They're actually 20. Marked them down
20 or somebody marked them down.

21 MR. ADAMS: Here's a better example, Your Honor.

22 THE COURT: You're going to have to work me into --
23 show they're more, they're better. These are pretty good,
24 unless they cut costs for short-term profits at the expense
25 of long-term health of the company.

1 MR. ADAMS: Your Honor, if you take a look at --

2 THE COURT: I have -- I have no idea they've done
3 that. I've been totally satisfied with their product.

4 MR. ADAMS: Your Honor, take a look at this slide.
5 This is the *McNeil Nutritionals* case. This was a lawsuit
6 involving Splenda and they came out -- Food Lion was the
7 defendant. They came out with a brand called -- or Heartland
8 came out with a brand called "Sweet Choice." You can see how
9 similar the packages are. Splenda right next to it, Sweet
10 Choice. Both have a cup of coffee. The coloring is highly
11 similar. Packaging not confusingly similar. Why? Because
12 it was so commonly used by competitors that there was no
13 trade dress. At that point it didn't matter how similar they
14 were because the consumer is not going to look at one of
15 those brands or another brand and assume it comes from the
16 same source no matter how similar the packaging is.

17 And, again, just to go back over. This is another
18 view of the Kohl's packaging taken on the same display rack
19 with the GOLDTOE packaging at Kohl's.

20 So we finally take a look at our package. As Your
21 Honor noted, our package it's not really so much gold as it
22 is red, but there is a side panel that predominately says the
23 word "sport." "GOLD LABEL" is prominently written in white.
24 Anybody can also see there's no gold toe at the top of the
25 sock.

1 So what -- again, what Gildan is asking us all to
2 believe and of all of those features that they themselves
3 taut as being so famous are not present on this sock,
4 somebody is going to walk in and look at that red label and
5 say, oh, this must be a Gildan sock. And I submit that's a
6 ridiculous proposition to put forward under these
7 circumstances. We've been using the GOLD LABEL font on a
8 wide variety of products for many years without any
9 complaint.

10 Here's another example, Excedrin and Tylenol.
11 There was a lawsuit in this case, *Bristol-Meyers* case. The
12 court said, "In this case, by the far the most prominent
13 feature of the Excedrin PM trade dress is the trade name
14 'Excedrin.'" There's no surprise. "At least as prominent on
15 the Tylenol PM packaging is the trade name 'Tylenol.' These
16 trade names are the major features of otherwise ordinary
17 boxes."

18 Again, you can rewrite this to fit in this case.
19 In this case, by far the most prominent feature of the Gildan
20 trade dress is the trade name GOLDTOE. At least as prominent
21 on the Dillard's packaging is the trade name GOLD LABEL.
22 These trade names are the major features of otherwise
23 ordinary packaging.

24 So then you come to the question of the entitlement
25 to irreparable harm, and I really don't think we have to go

1 there because, as we've demonstrated, there's no evidence
2 regarding a single consistent overall image to Gildan's
3 athletic sock record. There's no evidence in the record that
4 there's any similarity -- substantial similarity between
5 Gildan's various designed wrappers and Dillard's actual
6 commercial product.

7 But it is interesting to note that in the *eBay* case
8 the Supreme Court has established a four-factor test and it
9 pretty much have done away with presumptions altogether.

10 The *Winter* case, which is a more recent case, "A
11 plaintiff seeking a preliminary injunction must establish
12 that he is likely to suffer irreparable harm in the absence
13 of preliminary relief." That language has been taken by
14 virtually almost every case to address this to "must
15 establish" as meaning cannot rely on presumptions. There has
16 to be actual proof of irreparable harm in the absence of
17 preliminary relief.

18 THE COURT: And if they win, you'll be able to pay
19 off all the big damages that exist between now and then. So
20 it won't be any problem there. Is that what you're saying,
21 part of what you're saying?

22 MR. ADAMS: I'm saying --

23 THE COURT: Can't suffer irreparable harm because
24 it's monetary and you'll be able to pay them off?

25 MR. ADAMS: Yes. And I think there's an issue of

1 delay here as well, Your Honor. As we sit here, this
2 product, our product, has been on the shelves for a year.
3 When we first heard about this was in late September. We
4 received a very unpleasant and officious letter from a valued
5 vendor of ours basically telling us to jump in the lake, go
6 to hell. They want you to take all of your stuff off the
7 shelf. They want you to destroy the labels. They were
8 talking to us like we were some counterfeiter unloading stuff
9 out of the back of a cargo container at midnight in the back
10 of a junkyard. Despite that fact, our lawyer, it wasn't me,
11 but who was representing Dillard's at the time, wrote a quite
12 sensible letter back saying, well, we don't agree with you
13 and here's why, but we'd be happy to discuss with you any
14 additional information that you've got concerning your trade
15 dress. In any event, we'll be happy to talk to you, or we'll
16 talk to you about separating the products on the shelf if
17 that's a real concern.

18 They never got back to us until they sued us a
19 month later. Then they waited another two months to file the
20 preliminary injunction motion. And by asking for expedited
21 discovery, that simply had the natural effect of delaying the
22 matter even further.

23 So, yes, Dillard's is well established and very
24 profitable company. It has plenty of money. If it loses
25 this case, it won't have any trouble paying whatever damages

1 Gildan is able to show. But I think it would be a thumb in
2 the eye of an upright and respectable business to impose an
3 injunction in a situation like this, and for that reason we
4 ask the Court not to do it.

5 THE COURT: Rebuttal.

6 MR. JONES: Your Honor, I'd be glad to address any
7 particular questions. Otherwise, I thank you for your
8 patience over this long morning. I'll try to keep this very
9 brief.

10 There are a couple of things, though, that
11 Mr. Adams said. You recall that when he was talking about a
12 particular feature of that was incorporated in Dillard's
13 trade dress, it was, quote, "completely arbitrary." Well,
14 Your Honor, if it was completely arbitrary when incorporated
15 in the Dillard's trade dress, then it was completely
16 arbitrary when incorporated amongst the constituents in our
17 trade dress. That's a two-way street. We didn't have to
18 choose the elements that we chose to incorporate in our
19 packaging. They did not have to chose to incorporate the
20 elements that they did in mimicking our packaging.

21 And with respect to the argument by Mr. Adams that
22 the intentional copying presumption is in effect only if the
23 claimant's trademark or trade dress is registered, I am
24 confident that is not the law. I don't have cases here this
25 morning. I'd be glad to do a post-hearing brief if you want

1 to, but I'm quite confident that is not the law.

2 THE COURT: We can -- we'll run all that. We'll
3 take a look at that ourselves.

4 MR. JONES: Okay. And Mr. Adams and Dillard's
5 takes the position that the appearance of the GOLDTOE threads
6 on the product, quote, "trumps everything else." In other
7 words, it doesn't matter what we did. If it trumps
8 everything else, we could have copied your packaging to a T
9 as long as we didn't copy the product with the GOLDTOE
10 lettering -- configuration.

11 THE COURT: I think he's saying -- I understand
12 that was -- that was his "a little bit over the top
13 argument." But what he was really saying, though, when you
14 look at this whole thing as a whole, this is part of it. In
15 other words, the confusion is going to come from looking at
16 these things together as opposed to just looking at the
17 label. Of course, if you do, you see GOLDTOE. I mean, it's
18 pretty big.

19 MR. JONES: He didn't show you the packages where
20 the GOLDTOE itself is not on the front. It doesn't appear
21 from the front the way they are packaged, for instance, in
22 the crew socks.

23 THE COURT: You ought to put -- you ought to put
24 that out there all the time. A lot of people look for that.

25 MR. JONES: I understand that.

1 THE COURT: As long as you don't let people down on
2 the -- on the quality. That's always a danger is if you
3 let -- you know, it's always a -- you can always make more
4 money by making -- getting somebody to manufacture cheaper or
5 making a lesser product, but that is fool's gold. Everybody
6 has a big celebration and gets big dividends first year and
7 wonder where the sales are. Don't stop making a good product
8 or I'll stop buying it.

9 MR. JONES: Your Honor --

10 THE COURT: As I say, I'm very happy with GOLDTOE.

11 MR. JONES: Your Honor, yes, it is possible for a
12 company after decades of success to destroy the good will
13 associated with the product. They can do it under a number
14 of ways, but the law supports the retention of the good will
15 that's associated with the product and its packaging.

16 THE COURT: There is no question about it. I'm
17 going to have to look at all of these arguments, and the
18 packaging is important.

19 MR. JONES: Okay. Your Honor, if there were
20 quality control issues associated with our client's product,
21 and I'm sure there are because there are in every
22 manufacturing regime, that is not an excuse for trade dress
23 infringement. It is not a legal defense for trade dress
24 infringement.

25 And finally, Mr. Adams said that the best way to

1 avoid confusion is to put the products side-by-side.
2 According to Dillard's, then, this mumble-jumbled mess is the
3 best way to avoid confusion. Mix them all up, put them
4 side-by-side. Notwithstanding the similarities, people will
5 figure it out.

6 THE COURT: I see the gold toe.

7 MR. JONES: The gold toe is there, Your Honor.

8 MR. ADAMS: Well, Your Honor --

9 MR. JONES: It says GOLD LABEL. See GOLDTOE.

10 THE COURT: But that's me. I understand there are
11 other people that might be --

12 MR. ADAMS: Your Honor --

13 THE COURT: -- they might have to read everything
14 before they grab something and head out of the store. I
15 don't go shopping. I go buying.

16 MR. JONES: Okay. That's the way males operate.

17 Thank you, Your Honor.

18 THE COURT: Yes, sir. Thank you.

19 MR. ADAMS: Thank you, Your Honor.

20 THE COURT: Yes, sir. Thank you.

21 I would encourage you all to -- let me say this: I
22 would encourage you all to talk about working things out. It
23 seems, to me, that the difficulties you all are having with
24 each other could be compromised somewhat to get this done.
25 You really don't want to leave this always to the courts.

1 I think there just recently in the last few days we
2 had a decision come down. There's eight notes in music, I
3 think. I imagine that the heirs of Mozart are going to be
4 bringing lawsuits here pretty soon with this new decision
5 that a jury came down and decided that two songs that are --
6 they in some parts sound a little similar, but I've listened
7 to both of them. But the jury -- it was the jury's decision
8 and left to them they gave \$7 million to the heirs of Marvin
9 Gaye. Now, that might have been the right decision; that
10 might have been the wrong decision. Somebody wins in these
11 things and somebody loses, and you just don't know how that
12 really is going to turn out.

13 It really seems to me both sides are trying to sell
14 things. In this case, Dillard's has a large product line and
15 sell these socks, which do have high quality. Checking them
16 out over here. People might try it once, but if they don't
17 have it, they'll never try them again.

18 And it's really -- I mean, the packaging -- the
19 packaging is important, but there are -- you know, you all
20 can probably find a way to work this out between the two of
21 you. And I would think that was something that would be
22 beneficial to both sides rather than to continue to go down
23 this line, because I don't think there's going to be -- if I
24 thought there was something that couldn't be done without
25 doing violence to one side or the other, I wouldn't say what

1 I'm saying. But it seems to me that ought to be something
2 everybody ought to think about. From my decisions, I will
3 follow the law and nothing else.

4 MR. ADAMS: Thank you, Your Honor.

5 MR. JONES: Thank you, Your Honor.

6 (Concluded at 11:10 a.m.)

7 * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA

CERTIFICATE OF COURT REPORTER

I, Jillian M. Turner, RMR, CRR, CLR, Official Court Reporter, certify that the foregoing transcript is a true and correct transcript of the proceedings taken and transcribed by me in the above-entitled matter.

Dated this the 18th day of March 2015.

/s/ Jillian M. Turner
Jillian M. Turner, RMR, CRR, CLR
U.S. Official Court Reporter

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:14-cv-00590-MOC-DSC

GILDAN USA INC.,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
DILLARD'S, INC.,)	
)	
Defendant.)	

THIS MATTER is before the court on plaintiff's Motion for Preliminary Injunction. Finding that plaintiff has not shown a likelihood of success, irreparable harm, that the balance of the hardships favors granting relief, or that the public interest supports injunctive relief, the court will deny the Motion for Preliminary Injunction.

FINDINGS AND CONCLUSIONS

I. Background

Defendant operates a chain of department stores and sells, among other items, apparel manufactured by plaintiff, including men's GOLDTOE brand athletic socks. In addition to selling plaintiff's socks, defendant also sells men's athletic socks under its own GOLD LABEL brand. It is undisputed that both plaintiff and defendant sell a number of items under their respective marks in addition to men's athletic socks.

In seeking a preliminary injunction, plaintiff contends that the packaging used by defendant infringes its trade dress rights under the *Lanham Act* and, for purposes of the instant motion for injunctive relief, claims trade dress protection for the following packaging elements:

(1) a colored band with contrasting white or gold lettering for its wordmark having two components, the first of which is the term “GOLD”; (2) a rectangle of contrasting color in the upper-right portion of the front of the packaging; and (3) side panels which incorporate the color gold. Defendant contends that its accused packaging does not infringe plaintiff’s trade dress as it is composed of design and graphical features that are conventional and commonly used in sock packages and labels.

At the hearing, plaintiff presented a display of its full line of GOLDTOE socks. The court noted that while all the packaging included the word GOLDTOE, the colors and graphical elements used varied across the entire product line, with some wrappers having little similarity to the GOLDTOE packaging used in men’s athletic socks. In most samples, the most prominent feature was the “gold toe” of the socks, which typically protruded from the top of the package.

Plaintiff also presented exhibits demonstrating the genesis of defendant’s packaging from a point in time when plaintiff considered that it did not infringe to the current version of the GOLD LABEL men’s athletic sock packaging, which plaintiff contends does offend protections afforded under the Lanham Act. Based on such exhibits, plaintiff argued that defendant’s management intentionally steered its graphic artist toward a design which essentially copied plaintiff’s packaging.

Defendant also presented a display of its socks as well as other manufacturer’s socks in a PowerPoint presentation. Defendant demonstrated that despite serving a request for production, plaintiff failed to provide it with all iterations of its men’s athletic sock packaging. Defendant’s presentation was compelling as it demonstrated that plaintiff had not consistently used the elements for which it claims trade dress protection; equally, it was troubling to the court that

plaintiff failed to produce those packages, which were unfavorable, when requested to do so. Further, defendant demonstrated that other sock purveyors used various shades of blue in their men's athletic sock packaging, arguing that the use of labels with blue fields was simply what was popular in current packaging of men's athletic socks.

II. Preliminary Injunction Standard

A preliminary injunction is an extraordinary remedy, the primary function of which is to protect the *status quo* and to prevent irreparable harm during the pendency of a lawsuit. In re Microsoft Corp. Antitrust Litigation, 333 F.3d 517, 525 (4th Cir.2003). A plaintiff seeking a preliminary injunction must give notice to the opposing party under Federal Rule of Civil Procedure 65 and, at the hearing, must establish the following: (1) plaintiff is likely to succeed on the merits; (2) plaintiff is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of the equities/hardships tips in plaintiff's favor; and (4) an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008); Moore v. Kempthorne, 465 F.Supp.2d 519, 525 (E.D.Va.2006) (“[t]he standard for granting either a TRO or a preliminary injunction is the same”).

The most recent Rule 65 test was adopted by the Court of Appeals for the Fourth Circuit in The Real Truth About Obama, Inc. v. Fed. Election Comm'n, 575 F.3d 342, 346–47 (4th Cir.2009), *vacated on other grounds*, 130 S.Ct. 2371, 176 L.Ed.2d 764 (2010)(memorandum opinion), *reissued in pertinent part*, 607 F.3d 355 (4th Cir.2010), *overruling* Blackwelder Furniture Co. v. Selig Mfg. Co., 550 F.2d 189 (4th Cir.1977) (providing a four-pronged balance of the hardships test). The Winter Court emphasized that a plaintiff must demonstrate more than

just a “possibility” of irreparable harm and make a strong showing of likelihood of success on the merits. Winter, 129 S.Ct. at 375.

III. Discussion

A. Likelihood of Success on the Merits

Based on the briefs and presentations at the hearing, the court finds that plaintiff is not likely to prevail on the merits of its claim. To prevail on its unregistered trade dress claim, plaintiff must be able to prove three elements: “(1) the alleged trade dress is primarily non-functional; (2) its alleged trade dress is inherently distinctive or has acquired a secondary meaning; and (3) the alleged infringement creates a likelihood of confusion.” Tools USA & Equip. Co. v. Champ Frame Straightening Equip., Inc., 87 F.3d 654, 657 (4th Cir.1996).

Despite the court’s initial concerns, which were based in great part on the coloration of the band -- an element claimed in the Complaint -- plaintiff has apparently abandoned its “blue band” claim in its arguments on the instant motion. While plaintiff properly cites the court to J. Thomas McCarthy, *McCarthy On Trademarks And Unfair Competition* § 8:1, at 8-3 (2009), for the proposition that a trade dress claimant is free to define the set of packaging elements for which it claims protection, the court does not agree that plaintiff can, after making such election in the Complaint, pick and choose from those elements in formulating its request for preliminary injunction. The reason is simple: the likelihood of success of the merits test asks whether plaintiff is likely to prevail on the claim it has asserted in its Complaint, not a subset of that claim as expressed in the request for injunctive relief.

1. Burden of Showing that Trade Dress is Non-Functional

In any event, what was made plain to this court at the hearing is that plaintiff will be unlikely able to show that its claimed trade dress is primarily non-functional. “[T]rade dress protection may not be claimed for product features that are functional.” TraFFix Devices, Inc. v. Mktg. Displays, Inc., 532 U.S. 23, 29 (2001). Put another way, the Lanham Act does not afford protection to functional aspects of product packaging or to commonplace design elements. Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 775 (1992). Where it is common practice in a particular industry or segment of that industry to package like goods in a similar style, trade dress which simply follows or mimics that style is unlikely to be infringing and more likely to be generic, making such packaging “functional.” Mana Prods., Inc. v. Columbia Cosmetics Mfg., Inc., 65 F.3d 1063, 1069-70 (2d Cir. 1995).

Even if the court were to include the “blue band” in its consideration, defendant has demonstrate that the use of a blue band in the packaging of men’s athletic socks is nothing in which plaintiff can claim any proprietary interest. Indeed, defendant provided the court will multiple examples of other men’s athletic sock purveyor’s use of varying shades of blue in their bands. Indeed, “color...can *never* be inherently distinctive, although they can be protected upon a showing of secondary meaning.” Wal-Mart Stores, Inc. v. Samara Bros., 529 U.S. 205, 206 (2000) (emphasis in the original). Here, plaintiff’s own display at the hearing clearly indicated that there is no association between GOLDTOE socks and the color blue as it used a wide range of colors in the packaging of its products. Further, as it appears that plaintiff is seeking trade dress protection for an entire product line, plaintiff’s in-court demonstration raises concerns that plaintiff will be unable to show that its claimed trade dress signifies an overall look which is

“consistent” throughout the line. Yurman Design, Inc. v. PAJ, Inc., 262 F.3d 101, 115 (2d Cir. 2001). Across its entire line of socks, plaintiff clearly uses an assortment of labels that utilize a spectrum of colors and design features, with some identical socks being displayed in different color packages based on store preferences. Within the men’s athletic socks which are primarily at issue here, defendant demonstrated to the court that plaintiff fails to consistently use the very elements it now claims are at issue in this action.

As to the use of the word GOLD, its use is likely functional as an attempt to identify its product as being of high quality. While plaintiff certainly has protection for its famous GOLDTOE mark, it has no trademark protection for only the word “gold” as this term is frequently used in a functional sense to identify the product as expensive, high quality or luxurious. Platinum Home Mortgage Corp. v. Platinum Fin. Grp., Inc., 149 F.3d 722, 728 (7th Cir. 1998) (“platinum” is a “self-laudatory term” which “describes the quality of plaintiff’s...services”).

As to the claimed rectangle in the upper right corner of the package, such element is also likely to be found to be functional as defendant has presented evidence that such device is commonly used to inform consumers how many pair of socks are in the package. Plaintiff admits as much in its Complaint (#1), at 19.

As to the gold side panels, defendant has presented a number of exhibits showing that the use of side panels on sock packages is commonplace in the industry. In addition, defendant has shown a number of examples where plaintiff did not use side panels and cases where the side panels used are not even gold, but red.

In sum, the court finds it is unlikely that plaintiff will be able to show that its claimed dress is non-functional.

2. Distinctiveness

Plaintiff's next burden is to show that its alleged trade dress is inherently distinctive or has acquired a secondary meaning. Trade dress packaging is protectable if it is inherently distinctive or if it has acquired distinctiveness, "secondary meaning."

[T]he relevant inquiry is not whether the individual components of a design are common or not, but rather whether the alleged trade dress as a whole is inherently distinctive.

Ashley Furniture Indus., Inc. v. SanGiacomo N.A. Ltd., 187 F.3d 363, 373 (4th Cir. 1999).

Review of the evidence and arguments reveals that it is unlikely that plaintiff will be able to show that the claimed trade dress is inherently distinctive or has acquired secondary meaning. As is apparently the case in the sock market, "[w]here it is the custom of an industry to package products in a particular manner, a trade dress in that style would be generic and therefore not inherently distinctive." Paddington Corp. v. Attiki Imps. & Distrib., Inc., 996 F.2d 577, 583 (2d Cir. 1993).

While there is a presumption of distinctiveness that applies to the mark GOLDTOE, there is no presumption of distinctive that applies to the word GOLD as that is simply an individual word within a greater word mark. Victoria's Secret Stores Brand Mgmt., Inc. v. Sexy Hair Concepts, LLC, 2009 WL 959775, at *9 (S.D.N.Y. 2009). As courts have long observed, "dissecting marks often leads to error. Words which would not individually become a trademark may become one when taken together." Union Carbide Corp. v. Ever-Ready, Inc., 531 F.2d 366, 379 (7th Cir. 1976). Such conclusion is buttressed by evidence that defendant's use of the

brand GOLD LABEL is not just on socks, but on other items of apparel throughout its department stores. Clearly, defendant is attempting to imply that its full line of private-label goods are of superior quality, not that they are GOLDTOE products. “The linchpin of both common law and federal statutory trademark infringement claims is whether consumers in the relevant market confuse the alleged infringer’s mark with the complainant’s mark.” Z-Man Fishing Products, Inc. v. Renosky, 790 F.Supp. 2d 418, 431 (D.S.C. 2011) (citation omitted).

Plaintiff’s trade dress -- which varies precipitously across its full domestic product line -- does not likely serve as a source identifier for consumers. Instead, plaintiff attempts to show a presumption of secondary meaning through alleging that defendant copied its packaging. Plaintiff argues that its trade dress is “descriptive” and that it has, per se, garnered secondary meaning by defendant allegedly copying its work, making plaintiff’s trade dress distinctive. Clicks Billiards Inc. v. Sixshooters Inc., 251 F.3d 1252, 1264 (9th Cir.2001). However, the Court of Appeals for the Fourth Circuit has held that the

presumption [of secondary meaning] arises only where the intentional copying is motivated by an intent to exploit the good will created by an already registered trademark[.] [A] court should require one who tries to deceive customers to prove that they have not been deceived. ... In contrast, where the owner of the junior mark essentially copies a mark with no intent to exploit the senior mark’s goodwill—such as to describe a functional aspect of the product—the party claiming infringement must prove the likelihood of confusion without the benefit of a presumption. [A] likelihood of confusion should not be inferred from proof that the actor intentionally copied the other’s designation if the actor acted in good faith under circumstances that do not otherwise indicate an intent to cause confusion or to deceive.

Shakespeare Co. v. Silstar Corp. of Am., 110 F.3d 234, 241 (4th Cir. 1997) (internal citations omitted). While plaintiff has some evidence of possible copying, such evidence would not give rise to an inference as plaintiff has not come forward with evidence that defendant acted in bad

faith under circumstances indicating an intent to deceive or confuse. Indeed, defendant put on evidence at the hearing that it is routine for graphic artists to reference competitor's work in the clothing industry.

3. Likelihood of Confusion

Plaintiff also has the burden of showing that the alleged infringement creates a likelihood of confusion. In considering confusion, courts consider (1) the strength or distinctiveness of the plaintiff's mark, (2) the similarity of the two parties' marks, (3) the similarity of the goods and services the marks identify, (4) the similarity of the facilities the two parties use in their businesses, (5) the similarity of advertising used by the two parties, (6) the defendant's intent, and (7) actual confusion. Pizzeria Uno Corp. v. Temple, 747 F.2d 1522, 1527 (4th Cir.1984). While plaintiff argues that the court should ignore the product and concentrate on the packaging, such is simply not possible when considering the possibility of confusion.

It is not a far stretch to conclude that both plaintiff and defendant each designed packaging to display the quality of the socks. The most striking aspect of plaintiff's men's athletic sock is not the package, but the gold toe which protrudes from the top, making those socks easily identifiable as GOLDTOE products. On the other hand, defendant's package also does nothing to hide the fact that its toe is plain and appears intended to draw the consumer's attention to the thickness of its sport sock. Further, while it is undisputed that GOLDTOE is a strong mark, the evidence presented at the hearing indicated that plaintiff's trade dress was weak as "[i]ts main features are used by a not inconsiderable number of other companies for other products." P.F. Cosmetique, S.A. v. Minnetonka Inc., 605 F. Supp. 662, 668 (S.D.N.Y. 1985). Even when the court limits its review to just the packaging itself and further limits that review to

the elements plaintiff now claims in its motion as opposed to its Complaint, it is apparent that plaintiff's and defendant's packaging had similar generic or functional design elements. Further, as it appears that plaintiff is seeking trade dress protection for an entire product line, plaintiff's *own* in-court demonstration raises concerns that plaintiff will be unable to show that its claimed trade dress signifies an overall look which is "consistent" throughout the line. Yurman Design, Inc. v. PAJ, Inc., 262 F.3d 101, 115 (2d Cir. 2001). Across its entire line of socks, plaintiff clearly uses an assortment of sized and shaped labels that utilize a spectrum of colors and design features, with some identical socks being displayed in different color packages based on store preferences. As to the men's athletic socks at issue here, defendant demonstrated to the court that plaintiff fails to consistently use on those products the very elements it now claims are protected under the Lanham Act. Further, there is no evidence that defendant has ever represented to its customers that its private label socks were GOLDTOE. While plaintiff has presented a photograph of GOLDTOE socks stocked on a GOLD LABEL rack, which may indicate *employee* confusion, plaintiff has presented no evidence of actual *consumer* confusion. As to the quality of the product, plaintiff has presented no evidence that the socks being sold by defendant as a house brand are inferior to the socks being sold by defendant. The court has also considered the marketplace, and it appears undisputed that defendant sells many items other than socks under its GOLD LABEL brand and that it displays those socks in dedicated GOLD LABEL displays, not mixed in with GOLDTOE socks.

After considering the arguments and exhibits, the court finds that it is unlikely that plaintiff will prevail at trial on the merits. This factor weighs heavily against issuance of a preliminary injunction.

B. Irreparable Harm

Based on the memoranda and exhibits presented, the court determines that if the alleged infringing activity were allowed to continue, it is unlikely that plaintiff will suffer irreparable harm in the absence of preliminary injunctive relief. Indeed, even if the court were to assume that some harm could occur, such as loss of market share, those damages could easily be remedied through payment of money damages, making them repairable. As to any potential reputational harm, the court cannot find that such is likely in these circumstances. As discussed above, there is no evidence and the court cannot discern from handling the socks that defendant's brand is anything less than a high quality, comparable product. There is simply no evidence that anyone has mistakenly purchased defendant's socks believing them to be GOLD TOE socks. The court finds that this factor weighs against granting preliminary injunctive relief.

C. Balance of the Equities/Hardships

The court has considered the balance of the hardships. Defendant has shown that if a preliminary injunction were to issue, it would likely lose nearly \$1,000,000 during the course of this litigation. Shields Decl., Def. Ex. 1, at ¶ 34. While a preliminary injunction would certainly provide early trade dress protection for plaintiff in the event that a jury finds in its favor, the lack of such protection is likely monetarily quantifiable and could be assessed as actual damages

In addition to quantifiable damages, the court has also considered the potential for damage to plaintiff's reputation and brand. While damages can be presumed where there is infringement, it appears unlikely that a jury will here find infringement, at least on the evidence this court saw at the hearing. Balancing the hardships and the equities, the court finds that this factor weighs against granting preliminary injunctive relief.

D. Public Interest

Finally, the court has considered the public interest. Clearly, the public is interested in being able to rely on packaging to direct them to genuine goods. GOLDTOE is a famous brand that carries tremendous good will, a reputation for quality, and brand loyalty. The public also has an interest in having a competitive market place, where it can purchase products which it may perceive as being of better quality or better value. Courts have long recognized that dominant players in the market cannot suppress such competition simply by pointing to similarities in packaging:

With the rise of regional and national discount retailers with established names and logos, retailers who market both national brands and their own private label brands in direct competition, this form of competition has become commonplace and well-known in the marketplace. When such packaging is clearly labelled [sic] and differentiated ... we are unwilling to attribute ... absent clear precedent so requiring, a rule that would make such competition presumptively unlawful.

Conopco, Inc. v. May Dep't Stores Co., 46 F.3d 1556, 1565 (Fed. Cir. 1994). Indeed, "the Lanham Act must be construed in the light of a strong federal policy in favor of vigorously competitive markets." Landscape Forms, Inc. v. Columbia Cascade Co., 113 F.3d 373, 382 (2d Cir. 1997).

With those concerns in mind, the centerpiece of this discreet inquiry is whether the public would be deceived if the court were to allow defendant's packaging to remain on its shelves

during the pendency of this litigation. N.Y. City Triathlon, LLC v. NYC Triathlon Club, Inc., 704 F. Supp. 2d 305, 344 (S.D.N.Y. 2010). As discussed above, the court finds it unlikely that customers *shopping at defendant's stores* will be deceived into thinking that GOLD LABEL socks are GOLDTOE socks as defendant uses its GOLD LABEL brand throughout its store. In addition, defendant's packaging further identifies the socks as a house brand by including its other proprietary mark ROUNDTREE & YORKE. Considered in context, the public interest would likely be disserved by granting an injunction as it appears that such would only serve to diminish competition in the absence of any actual confusion. Put another way, the relief plaintiff seeks at this juncture would be like putting water on a house that was not on fire.

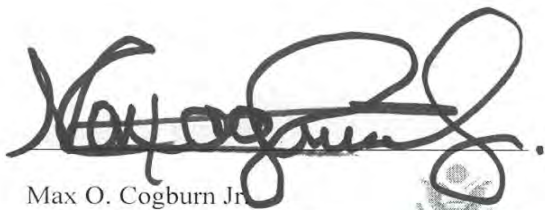
IV. Conclusion

Having carefully considered all four factors, the court finds that the entry of a preliminary injunction is not called for in this particular matter.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff's Motion for Preliminary Injunction (#16) is **DENIED**.

Signed: March 20, 2015

A handwritten signature in black ink, appearing to read "Max O. Cogburn Jr.", is written over a horizontal line. The signature is stylized with large loops and a trailing flourish.

Max O. Cogburn Jr.
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

NOTICE OF APPEAL

Notice is given that Plaintiff Gildan USA Inc. ("Gildan") hereby appeals to the United States Court of Appeals for the Fourth Circuit from the Court's March 20, 2015 *Order* denying Gildan's motion for a preliminary injunction.

Respectfully submitted this 16th day of April, 2015.

s/ Larry C. Jones

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

GILDAN USA INC.,

Plaintiff,

v.

DILLARD'S, INC.,

Defendant.

CIVIL ACTION NO. 3:14-CV-00590-
MOC-DSC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 16, 2015, I electronically filed the foregoing *Notice of Appeal* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

s/ Uly S. Gunn
Uly S. Gunn